





PARALEGAL HANDBOOK FOR THE INFORMAL ECONOMY IN ZIMBABWE



Munya Gwisai and Edzai Edson Matika [Editors]

Paralegal Handbook for The Informal Economy in Zimbabwe





ZIMBABWE CHAMBER OF INFORMAL ECONOMY ASSOCIATIONS
ZIMBABWE CONGRESS OF TRADE UNIONS
INTERNATIONAL LAWYERS ASSISTING WORKERS NETWORK





Paralegal Handbook for The Informal Economy in Zimbabwe

Munya Gwisai and Edzai Edson Matika [Editors]

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Facilitated by Solidarity Centre

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Preface to Second Edition

In the urban expanses of Zimbabwe, the informal economy stands as the predominant employer, offering livelihoods to a significant demographic, particularly women, youths, and individuals with disabilities. Contributing over 60 percent to the national income, the informal economy assumes a pivotal and burgeoning role in the overall economic landscape.

Regrettably, the informal economy has long been met with hostility and suppression from the State, local authorities, and legal structures, echoing the enduring shadow of colonial policies. This has resulted in the highest incidence of lack of decent work, low productivity, meager incomes, heightened poverty, and a lack of social protection for those engaged in informal sectors.

On a positive note, the 2013 Constitution of Zimbabwe marked a paradigm shift, abandoning a history of hostility and repression towards the informal economy by embracing a developmental and inclusive approach. Recognizing the right to work as a basic human right for all, including informal workers, the new Constitution aligns with international strides such as the 2015 adoption of the International Labour Organisation's (ILO) Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).

Recommendation 204, the first international labor standard addressing the entirety and diversity of the informal economy, explicitly directs the transition of workers and economic units from the informal to the formal economy. This transition is envisioned as a means to achieve decent work for all and foster inclusive development.

However, a significant challenge persists. The informal economy operates under a complex and occasionally bewildering array of laws and policies at both national and local levels. The lack of harmonization in this legal and regulatory framework poses a formidable obstacle for workers, entrepreneurs, and stakeholders in understanding applicable laws, policies, and initiating reforms.

The first edition of this handbook played a crucial role as a pioneering milestone, bridging knowledge and access gaps concerning the legal and policy regulatory framework of the informal economy. Yet, major changes in the legal, constitutional, and policy landscape since then, particularly the 2013 Constitution, National Development Strategy 1, and ILO Recommendation No. 204, necessitate an update. This second edition aims to encompass recent developments and serve as a fully comprehensive guide to the legal and policy regulatory framework of the informal economy in Zimbabwe.

Jeffrey Vogt,

Director of the Rule of Law Department,

American Center for International Labor Solidarity
and

Wisborn Malaya,

General Secretary,

Zimbabwe Chamber of Informal Economy Associations



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The initiative was spearheaded by the Zimbabwe Chamber of Informal Economy Associations (ZCIEA) and received crucial support from the American Center for International Labor Solidarity (Solidarity Center). The roots of this project trace back to the original idea of creating a Rights Awareness and Paralegal Manual for Informal Workers in 2008. This concept emerged from the dedicated efforts of the Informal Technical Desk at the Zimbabwe Congress of Trade Unions (ZCTU) and the ZCIEA General Assembly under the leadership of Mrs. Mugijima.

The meticulous research and preparation for the second edition were carried out by Matika Gwisai and Partners Legal Practitioners in collaboration with the Zimbabwe Labour Centre (ZLC). Early drafts underwent a thorough peer review, with valuable feedback from ZCIEA territorial leaders obtained through workshops.

Special acknowledgement is extended to the ZCIEA Executive under the leadership of the President, Lorraine Sibanda, General Secretary Wisborn Malaya, and Jacqueline Wambui Wamai, Regional Coordinator of the International Lawyers Assisting Workers Network of the Solidarity Center. Their unwavering guidance and commitment served as the driving force behind this edition.

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Abbreviations and Acronyms

BUTA	Bindura University Transformation Ambassadors
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CIPE	Centre for International Private Enterprise
CHISA	Chitungwiza Informal Traders Association
стис	Commonwealth Trade Union Council
EMCOZ	Employers Confederations of Zimbabwe
ESAP	Economic Structural Adjustment Programme
GGA	Good Governance Africa
IFWEA	International Federation of Workers Education Associations
IIED	International Institute for Environment and Development
ILO	International Labour Organization
ITDG	Inter Technological Development Group
LAMA	Law and Order Maintenance Act
MCR	Micro Concrete Roofing Tiles
MDC	Movement for Democratic Change
MDGs	Millennium Development Goals
MPSLSW	Ministry of Public Service, Labour and Social Welfare
NGO	Non-Governmental Organization
NSSA	National Social Security Authority
POSA	Public Order Security Act
S.I.	Statutory Instrument
SADC	Southern Africa Development Committee
SATUCC	Southern Africa Trade Union Coordinating Council
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
WABAZ	Women Alliance of Business Associations in Zimbabwe
WIEGO	Women in Informal Employment: Globalizing and Organizing
ZANU-PF	Zimbabwe African National Union-Patriotic Front
ZCBTA	Zimbabwe Cross Border Traders Association
ZCIEA	Zimbabwe Chamber of Informal Economy Association
ZCTU	Zimbabwe Congress of Trade Unions
ZIMRA	Zimbabwe Revenue Authority
ZLC	Zimbabwe Law Commission



About this Handbook

Objectives of the Handbook

The objectives of this handbook include the following:

- Capacitation of paralegals: The handbook is a tool to assist paralegals and representatives of
 workers and economic units in the informal economy in understanding the applicable laws and
 policies and better able to represent their members in legal challenges they face.
- Policy and legislative reform: The handbook will assist stakeholders in the informal economy in the identification of areas for policy and legislative reforms. In particular, the alignment of statutes, by-laws, and regulations to the 2013 Constitution and its underlying developmental and inclusive approach to the informal economy. It is also key in achievement of policy goals of transition from informality to formality that underlie major national policies like NDS-1, Vision 2030, National Gender Policy and National Strategy for Transition to Formality. The handbook provides a consolidated summary of the applicable laws for use to the different stakeholders including associations of workers and entrepreneurs in the informal economy, policymakers at Central Government and Local Government levels, legislators, trade unions and formal business players.
- **Education and training:** The handbook is an educational and training manual for workers in the informal economy and their associations to have a basic knowledge and defence of their rights from a position of knowledge as well as in their public policy advocacy programmes.
- Research: The handbook is a useful addition to the research materials on the informal economy, in particular the legal regulatory framework as a critical and essential part of achieving the goal of transition from informality to formality.
- Raising awareness: The handbook will help raise society's awareness of the condition and rights
 of workers and economic units in the informal economy and the need for policy and legislative
 reform.

Organization of the Handbook

This edition of the handbook has six modules, with each module containing several units on particular subject areas.

- Module 1 covers origins, history and nature of the informal economy in Zimbabwe.
- **Module 2** is an Introduction to law and the right to work of the informal economy as a basic human right.
- Module 3 gives the legal framework governing the types of businesses and operating requirements and environment of businesses in the informal economy.
- **Module 4** provides the regulatory policy framework governing the types of businesses and operating requirements and environment of businesses in the informal economy.
- Module 5 looks at the decent work agenda, basic employment rights and social security in the informal economy.
- Module 6 concludes the handbook looking at defence and enforcement of rights as well as setting
 out an outline of recommendations for a reform agenda on the informal economy.



Meaning and Importance of Informal Economy Paralegals

A paralegal is a person who has undergone a basic legal training course and has acquired knowledge and experience regarding the legal system and substantive and procedural law. A paralegal is not a fully qualified lawyer.

Roles of paralegals in the informal economy



A paralegal is not a lawyer and will not be allowed to do some of the core functions of qualified lawyers with practising certificates.

A paralegal cannot represent clients in criminal and civil courts. It is an offence under the Legal Practitioners Act [Chapter 27:07] for a person who is not a qualified legal practitioner and not holding a current practising certificate to hold themselves out as lawyers and undertake the functions of a legal practitioner.

However, a paralegal is able to do many functions that are legal related. These include the following:

- carrying out training and awareness programs on basic laws and by-laws affecting the informal economy and informal economy workers.
- Representing workers and economic units in the informal economy and their associations in disputes that may arise involving local authorities, public bodies, employers, and businesses in the formal sector.
- Drafting and interpretation of legal documents, including statutes and by-laws.
- Research on developments in laws and policies affecting the informal economy, identifying loopholes and influencing policy changes and reforms.
- Conduct educational and training programmes on the fundamental rights of workers and the basic legal and policy regulatory framework governing the informal economy.



MODULE 1:

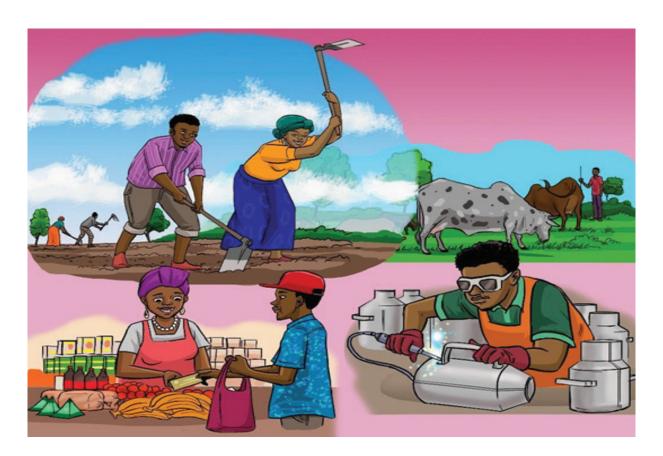
MEANING, NATURE AND HISTORY OF THE INFORMAL ECONOMY IN ZIMBABWE

The following Units are covered in Module 1

- 1. Defining the informal economy
- 2. Nature, roles and extent of businesses in the informal economy
- 3. History of the informal economy in Zimbabwe: the case of marginalization, resistance, reforms and the role of trade unions

Module 1/Unit 1:

Defining the informal economy



What is the informal economy? The term informal economy refers to the economic activities by workers and economic units that are not covered or insufficiently covered by formal arrangements except for those involved in illicit activities.

This definition comes from the ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). Article X states that the term "informal economy":

(a) refers to all economic activities by workers and economic units that are – in law or in practice not covered or insufficiently covered by formal arrangements; and



(b) does not cover illicit activities, in particular the provision of services or the production, sale, possession, or use of goods forbidden by law, including the illicit production and trafficking of drugs, the illicit manufacturing of and trafficking in firearms, trafficking in persons, and money laundering, as defined in the relevant international treaties.

The terms "workers" and "economic units" have the following meanings:

Workers include:

- employees holding informal jobs in or for formal enterprises, or in or for economic units in the
 informal economy, including but not limited to those in subcontracting and in supply chains, or
 as paid domestic workers employed by households;
- workers in unrecognized or unregulated employment relationships, and
- contributing family workers, irrespective of whether they work in economic units in the formal or informal economy.

Economic units include:

- units and entrepreneurs that employ hired labour;.
- units that are owned by individuals working on their own account, either alone or with the help of contributing family workers, (own-account workers); and
- cooperatives and social and solidarity economy units and their members. Social and solidarity economic units [SSEs] include mutual societies and self-help groups.

A key feature of the informal economy is its diversity and the many different categories of work involved. It covers employees, as well as own-account workers, members of co-operatives, social and solidarity economic units and employers and entrepreneurs.

The businesses in this sector are informal in a variety of ways. For the most part they are unregistered and unrecorded in official statistics, hence negatively referred to as "the shadow economy." They often are not incorporated, that is having a separate legal identity from the owners. They tend to have little or no access to organized markets, to credit institutions, to formal education and training institutions or to any public amenities. They are not recognized, supported, or regulated by the government. They are often compelled by circumstances to operate outside the framework of the law. Even when they are registered and respect certain aspects of law they almost invariably are not covered by social protection, labour legislation and protective measures at the workplace.

On the other hand, they are not entirely immune from the long arm of the State, law and formality. They pay taxes and rates to the local authorities, pay value added tax on purchase of goods, equipment and raw materials. Many are often registered under different trade associations, clubs, and co-operatives through which they are recognized and subtly regulated by different local, provincial authorities and the national government.



Module 1/Unit 2:

Nature, roles and extent of businesses in the informal economy

The informal economy operates in the periphery of the formal economy. It is largely involved with production and service in the primary, secondary, and tertiary activities that cater primarily for the low-income market.

The primary activities of the informal economy include producing primary goods without much processing or manufacturing such as those in agriculture, mining, and fishing. Secondary activities are those involving an element of manufacturing or processing such as cottage industries. Tertiary activities include those involved in sale and distribution of goods and services such as trading and vending.

The informal economy suffers marginalization and oppression as a result initially of the legacy of colonialism. Colonialism established a "dual and enclave economy" which means a developed formal economy constituting the core of formal businesses who invest in business to make profits and employ wage labour or workers and are recognized and supported by the State. This system first emerged and was fully developed in western European countries like Britain, Netherlands and France over 400 years ago and then spread to Africa, Asia and throughout the world through the process of colonialism.

However, besides this formal economy, colonialism also had an under-developed, non-formal part of the economy comprising the rural sector engaged primarily in agricultural activities. As well as a small, urban informal economy composed of small, informal businesses, largely made up of blacks. It continued and grew after independence from colonial rule.

The informal economy now plays a key role in the country. In 2012, a survey of Micro, Small, Medium Enterprises (MSMEs) revealed that the estimated total turnover of MSMEs was US\$7.4 billion, representing about 63% of the nominal Gross Domestic Product.²

The World Bank estimates the informal "shadow economy" in Zimbabwe to be the third largest in the world. In terms of employment, the 2019 Labour Force and Child Labour Survey (LFCLS) showed that the informal employment accounted for 75.6% of total employment, while only 24.4% were in formal employment. By the First Quarter of 2022, the informal economy accounted for 88% of total employment. The informal economy offers employment for the majority of women and youths, with 55% of those in the informal economy being women and over 71% being youths.

^{1:} G .Kanyenze et al, The search for sustainable human development in Southern Africa, ANSA, 2006, Harare, 28.

^{2:} FinScope MSME Survey of 2012 (Zimbabwe).



Productivity In the informal economy is low and growth prospects are undermined by limited access to resources like capital, land, property, skills, finance, technology, and markets and excessive competition. This is largely due to low entry requirements and abundance of labour. Generally, operations are on a "survivalist mode" and directed towards subsistence rather than generating much surplus or profits. The types of business that dominate the informal economy have been aptly described as follows

Very small units of producing and distributing goods and services and consisting largely of independent self-employed producers in urban or rural areas some of whom employ family labour and or hired workers or apprentices who operate with a very limited capital or none at all, which utilize low level of technology and skills; which therefore operate at low levels of productivity, and which generally provides low and irregular incomes and highly unstable employment to those who work in it.

To understand the informal economy and the possibilities of development from informality to formality one must always keep in mind its history and that the informal economy is not homogenous. It is marked by considerable diversity and heterogeneity, what has been referred to as the "multiple faces of informality". These include different categories of work involved, different status of the operators in the industry and different degrees of informality. There are also intersecting issues of gender equality and marginalization and empowerment of women, youths and persons living with disability.³

The non-homogenous nature of the informal economy is due to several factors, including the following:

- Status: Some players are business owners, self-employed or own account workers. On the other hand, others are workers. The 2012 MSME Survey revealed that of the 5.7 million people working in the sector, 2.8 million were business owners and 2.9 million were employees.
- Size, scale, and form: There are individual entrepreneurs, micro enterprises, small scale, and medium scale enterprises using the numbers of employees employed. The 2012 MSME Survey revealed that of the business owners surveyed, 71% were individual entrepreneurs with no employees, 24% had 1-5 employees (micro), 4% had 6-30/40 employees (small), and 1% had 30/40-75 employees (medium).
- Degrees of informality: Some businesses have a degree of formality for instance being registered, licensed, or incorporated as companies or co-operatives. Others have no level of formalization whatsoever. The 2012 survey revealed that of the MSMEs surveyed, 85% were not registered or licensed whereas 15% were. Of the 15% that were formal (registered/licensed), 71%

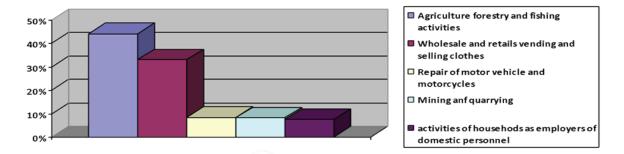
were licensed with a local authority or council, 17% with the Registrar of Companies, 6% with the Registrar of Cooperatives and only 2% were registered with ZIMRA. Reasons for not registering or licensing included lack of money, lack of knowledge of the processes involved, the complexity of processes and that the owners considered the businesses too small to register and advantages from tax avoidance. Disadvantages include constant harassment by the police and authorities and lack of opportunities to grow.

³ Director General Report, International Labour Conference, 1991.



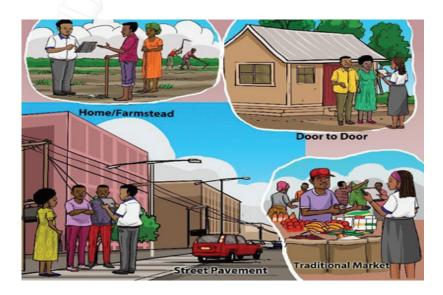
In terms of the main sectors surveys revealed the following as the main ones:

- Agricultural, forestry and fishing activities (44%).
- wholesale and retail, driven by vending and selling clothes (33%).
- repair of motor vehicles and motorcycles; 8.4%.
- mining and quarrying; 8.2%.
- manufacturing; activities of households as employers of domestic personnel, 7.5%.



The 2012 Survey further showed that 61% of MSMEs operated mainly from residential premises (home, farmstead), 11% door to door/go directly to customers, 9% from the street/pavement, and 6% from a traditional market.

There is a divide between the urban and rural sector. The 2019 Labour Force and Child Labour Survey (LFCLS) estimated that 46% were employed in the rural informal economy and 54% in the urban informal economy.



In terms of financial inclusion estimates show that about 57% of MSMEs are financially included, that is use some form of financial product or services, whether formal such as in banks or informal. The majority of business owners did not have a bank account for business purposes with only 3% used a bank account in the name of the business.

In terms of demography, women constitute the majority of persons employed in the informal economy at 54% compared to 46% for males. However, their participation and extent of income is compromised by the double burdens that women bear, namely a disproportionate burden of unpaid domestic work, including care work, leaving them with limited time to engage in productive activities compared to men. But the informal economy still offered women a better chance of work than the formal sector. A survey in 2014 showed that males constituted 69.5% of formal sector employees, while females were dominant in the informal sector at 52.5%. Another feature is the dominance of youths in the informal economy.



Youths dominate in the informal economy at 71% whereas 96% of those under the age of 15 years work in informal employment.

A major feature of the informal economy is that of acute decent work deficits. Decent work is defined by the ILO as productive work in conditions of freedom, equity, security, and human dignity. It is work which ensures a fair income, employment security, rights at work, social protection, equality of opportunity and treatment for women and men and right to social dialogue that allows workers collectively to participate in decisions that affect their lives. Decent work deficits mean lack of decent work values. Most of the time workers in the informal economy are not covered by social security, labour and occupational safety laws and measures. Workplaces in the informal economy are often unsafe and unhealthy. There is a tendency "toward self-exploitation" through over-utilisation of own labour and that of family labour through long hours for no or little pay. This results in fast depreciation of human capital, health problems and reduced life expectancy.⁴

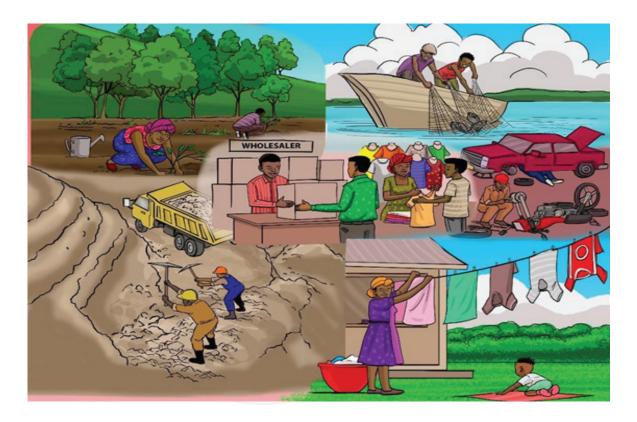


⁴ G Kanyenze et al, (2006) 35-36.



Module 1/Unit 3:

History of the informal economy in Zimbabwe: the case of marginalization, resistance, reforms, and the role of trade unions



(a) Pre-colonial, colonialism and emergence of capitalist society

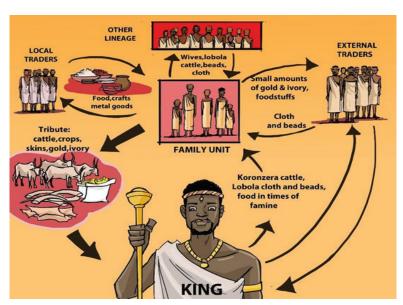
The origins of the informal economy in Zimbabwe is a legacy of the "dual and enclave" economy and grafted capitalism that was introduced by colonialism and continued after independence.

When the European colonizers conquered and colonized states in Africa (and Asia), they established a new economic and political system called capitalism. Their aim was to pursue raw materials for the industries, and look for markets for their good. They also wanted to have global political influence.

This was different from the system of feudalism that had until then existed in most parts of Africa. In this society the principal economic activities were agriculture and cattle rearing done by peasants. Whilst land was not privately owned, access to it was controlled by a small minority of feudal male elites composed of Mambos, Changamires (kings), chiefs, military leaders, and religious leaders, masvikiro. The same elite controlled the other major resources like gold mining and trade and hunting, especially ivory trade. The feudal elites controlled the state, law and the judiciary and religion. The system was also based on patriarchy, that is the domination and exploitation of women and young males by rich, elderly males.

Colonialism uprooted feudalism and replaced it by the new system of capitalism. Capitalism is a system based on ownership and control of the main means of production by the owners of money or capital, the capitalists. The main means of production or resources like factories, banks, land, mines and other resources are owned as private property by the capitalists. Production is done through labourers who are generally excluded from ownership and control of the means of production but survive only by selling their capacity to work, labour power, to the capitalists and paid a wage.





Under capitalism production is focussed on production of commodities, goods for sale on the market to produce profits for the capitalists.

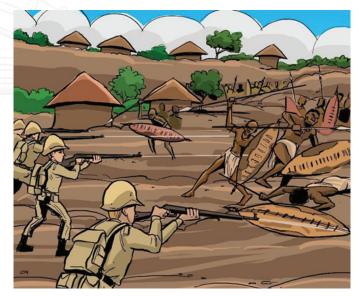
This is different from the feudal system in which the main aim of production was subsistence of the peasants and luxury consumption of the feudal ruling classes.

Capitalism had been established in Europe from the 17th century onwards when the capitalists' led revolutions that overthrew the old feudal ruling classes and became the new ruling class.

Unlike what had happened in Europe, capitalism in Africa did not develop organically from indigenous processes but was imposed from outside. This resulted in a "dual and enclave economy". On the one hand, a relatively developed but distorted formal economy focussed on primary production of goods for export and dependent on the metropolitan colonial centres. In the rural areas (called 'reserves' the old feudal subsistence agricultural activities continued, largely dependent on the labour of the women and young.

The unpaid work of women in the rural areas effectively subsidized the capitalists as they did not have to pay the full wage for a worker to look after himself and his family. When the worker fell ill or became old, he went to his rural home where he was looked after by the traditional social security system.

The capitalists did not have to pay for pensions or medical aid. Thus, there was super-exploitation of the worker as the capitalists did not have to pay for the full cost of wages, as this was subsidised by work in the rural economy.



This dualist system provided colonialism with cheap labour by black male workers and subsidised by the unpaid work of African women in the rural areas, including traditional social security systems. 5

(b) After Independence and neoliberalism

Colonialism was defeated across Africa, with Zimbabwe attaining independence in 1980. But, the "dualism" and "enclave" character of the economy continued and intensified after independence. The urban informal economy grew as the undemocratic and racist colonial restrictions on rural to urban movement were removed.

Midgley J "Social security in developing countries: Integrating state and traditional systems" (1994) 22/23 Focaal- European Journal of Anthropology 219 at 221.



In the 1980s, the capitalists (supported by governments and international financial institutions) adopted free market and austerity policies known as neo-liberalism. These policies took the form of Structural Adjustment Programmes (SAPs). In Zimbabwe it was adopted from 1990 and called the Economic Structural Adjustment Programme (ESAP).

These austerity policies further led to contraction of economies and de-industrialisation. In Zimbabwe, this led to massive contraction of the formal economy, huge poverty and job losses. Local companies could not compete with multinationals which were now allowed to freely operate because of deregulation of the economy.

Economic crisis and ESAP led to the explosion in growth of the informal economy. Thousands of retrenched workers joined those already unemployed to make a living in the informal economy. The removal of government subsidies for basic goods and services like education, health and food stuff resulted in the soaring prices of basic goods and services. Even those employed struggled, and their spouses sought to augment dwindling family income by joining the informal economy. The Fast Track Land Reform Programme after 2000, which whilst giving land to tens of thousands of peasants, did not cater for the farmworkers. Over 300 000 of farmworkers lost their jobs and many joined the informal economy for survival.

The situation was made worse by high levels of corruption and nepotism in business and government as well as high government expenditure, lack of transparency and unpunished fraudulent offenders who cost the nation millions of dollars. Today the Informal economy employs over 80 percent of the workforce employed in Zimbabwe.

Children, mostly girls, dropped out of school. High rates of mortality triggered by prevalence of poverty and diseases like AIDS and kwashiorkor were recorded. Life expectancy dropped and Zimbabwe was robbed of its productive edge. Society lost its moral dignity as unemployed youth turned to prostitution and drug abuse. The State Social Welfare Fund could not cope with the demand for its services and more children turned to the streets. Zimbabwean society was basically at a crossroads and so many people resorted to informal trade as a way of survival under such a harsh economic environment.

The Government failed to accept the reality on the ground that grafted capitalism and neoliberal policies like ESAP had failed resulting in economic contraction and the explosion of the urban informal economy. Instead, the Government responded in the same way as the colonial governments had done.

It resorted to repressive and harsh laws against the informal economy, seeking to drive the urban unemployed to the rural areas. The colonial anti-poor By-Laws and statutes were retained. This was particularly worse after 2000 with the emergence of a powerful urban, trade union-initiated opposition party, the MDC, which threatened for the first time since 1980 to unseat the Zanu PF Government. To undermine the urban poor base of the opposition and to contain the exploding urban informal economy, the Government launched the infamous Operation Murambatsvina in 2005. Informal economic structures, homes of the poor were destroyed with estimates putting that over 700 000 people lost their homes.



OPERATION MURAMBATSVINA



Source:VOA Zimbabwe



Source :Wordpress.com



(c) Resistance, reforms, and role of trade unions

(i) The role of ZCTU in the establishment of ZCIEA

Trade unions have continually resisted the attacks on the informal economy. The main labour federation in Zimbabwe, the Zimbabwe Congress of Trade Unions (ZCTU) took the leading role in mobilising resistance and reform in advocating for a complete and inclusive reform that harnesses the informal economy.

The earlier steps can be traced from 1993, when ZCTU established an Employment Creation Unit, with the support of the United Nations Development Programme (UNDP). The purpose of the Unit was to provide capital or seed money for self-help projects established by recently retrenched employees.

The ZCTU also undertook a study and mapping of the informal economy in Zimbabwe, which was presented at a tripartite meeting hosted by the ILO where the key stakeholders agreed to embark on the Decent Work Agenda for the country. The labour body was mandated to facilitate organizing the informal economy workers and recommend strategies for transformation.

This process led to the establishment of the ZCTU Informal Economy Project in 2002 under the sponsorship of the Commonwealth Trade Union Congress (CTUC). The main objective of the Project was to develop strategies to bridge the gap between formal and informal economies and organize education programmes to facilitate mainstreaming of the informal economy activities. The project eventually led to the birth of the Zimbabwe Chamber of Informal Economy Associations (ZCIEA).

At the May 2023 stakeholders delegates meeting, the CTUC, ZCTU and ZCIEA partners resolved that:

- The relationship between ZCTU and ZCIEA must be built on a firm bipartite base, which should be created by an instrument, which will mandate and guide the nature and manage the relationship.
- The bipartite platforms so formed must thrive to influence policy change at all levels for the necessary transformation of informal economy activities. As the two key stakeholders to fight to improve the employment conditions in Zimbabwe.
- The ZCTU Informal Economy Desk must continue to facilitate and develop the capacities and competencies of informal economy structures through research, training, education, and advocacy work and in the process work towards developing educators, organizers and its leadership.
- ZCTU and ZCIEA must work as partners with no dispensed interests as they fundraise for the relevant and programme activities and resist the forces that continue to lock out and marginalize the informal economy workers.

These resolutions led to the signing of a Memorandum of Understanding between ZCTU and ZCIEA on 3 August 2004

(ii) ZCIEA's achievements since establishment

ZCIEA has made some notable achievements since its establishment. These include in diverse areas such as organization consolidation, diversity, membership training and empowerment, strategic partnerships (locally and internationally), research, policy and legal advocacy and mobilizing resistance attacks on the informal economy.

⁶ The key stakeholders included Government through the Ministry of Public Service, Labour and Social Welfare (MPSLSW), Business represented by the Employers Consultative Council of Zimbabwe (EMCOZ) and Labour represented by ZCTU



Strengthening organisation and internal democracy and diversity

- Signed a memorandum of understanding with ZCTU in 2004.
- ZCIEA has established 236 Affiliate Chapters and 9 National Sectorial Associations.
- Held 3rd National Elective Congress on 23 and 24 October 2021.
- Out of 46 Territorial Presidents 29 are women elected at the 2015 National congress (2015 2020), 17 are men.
- The management committee has 10 members (5 females and 5 males).
- People with Disability committees in 46 territories of which 55% are women and 45% male.
- Youth committees established in 46 territories of whom 52 percent are male and 48 percent female.
- Developed an online membership database system to capture membership data and print
 membership cards. Members receive instant text messages during registration confirming their
 membership status. The platform can be used for communication and educational purposes i.e.,
 online training.
- The membership of ZCIEA now caters for both the urban and rural population.
- Strengthened and focused organization because of apolitical membership mobilization, servicing and recruitment exercises.



Source: ZCIEA 3rd Congress 2021



Membership training and empowerment

- Production of the ZCIEA Rights Awareness and Paralegal Manual.
- Successfully trained 12 Paralegal Officers and 15 more currently undergoing training.
- Membership acquired broad knowledge on rights awareness and educational programmes.
- Leadership of structures trained on lobby and advocacy initiatives and organizational resultsbased management.
- Developed a tool kit for Mainstreaming Decent Work in the Informal Economy.
- Developed tool kit for Social Security in the Informal Economy.
- ZCIEA promotes the involvement of women, the disabled and youth at a high level of decisionmaking bodies and activities.
- Developed eight ((8) study circle training manuals aimed at capacitating workers in the informal
 economy to defend their rights and safeguard their achievements. 500 study-circle booklets and
 500 ZCIEA Policies booklets were printed. 5000 pamphlets and 458 DVDs were produced and
 distributed to ZCIEA Territories.
- Successfully hosted a national symposium on documentary of informal economy in Binga and
 Chitungwiza on the 28 September 2015 with 106 participants. These included ZCIEA members
 from Harare, Chitungwiza, Kwekwe, Bindura, Chegutu, Mt Darwin, Chinhoyi, Marondera and
 Chivhu. Other participants were from the Ministry of Women's Affairs, Ministry of Home Affairs,
 Ministry of Micro, Small and Medium Enterprises, the Chitungwiza-Seke Councillor and seven
 other informal traders' associations from Harare. The symposium addressed the documentary and
 its outcomes and the 2015 Survey Report on harassment of informal traders by local authorities,
 the police and ZIMRA officials.
- 1869 members have been trained directly under the theme "# I am not a criminal-respect my working rights". These have further distributed 24000 flyers to their communities. 500 T-shirts were printed and distributed in different towns including Marondera, Chinhoyi, Mutare, Harare, Chivhu, Gutu, Masvingo, Zvishavane, Gweru, Bulawayo, Beitbridge, Chitungwiza and Bulawayo.



Source : ZCIEA Territorial Leaders Training



Resistance and Operation Murambatsvina

- Following the _"Operation Murambatsvina" In 2005, which destroyed the livelihoods and homes of hundreds of thousands of people in the informal economy, ZCIEA I was instrumental in establishing a command centre to follow up and capture data on the victims of the disastrous and demonic Operation. ZCIEA sent an appeal to the United Nations, which helped in the assignment of a special envoy, Ms A. Tibajuka to assess the situation.
- The Association contributed immensely to the Tibajuka Report to the United Nations.
- Between 2005 and 2006 a survey to assess the impact of Operation Murambatsvina was done by ZCIEA in conjunction with the ZCTU Informal Desk. The results showed that the operation severely affected the ZCIEA structures.

Local authorities, strategic partnerships, policy reforms

- ZCIEA launched a National Campaign and Petitioning of the government to review outdated byelaws and policies affecting the operations of the informal economy. Over 120000 petition forms were collected.
- ZCIEA has engaged Local Authorities concerning trade issues and negotiated working spaces for the informal economy workers and stands for cheap accommodation for the working poor.
- ZCIEA has signed Memorandum of Understanding with 29 local authorities and actively participated and contributed to the City of Harare Small and Medium Enterprises Policy, April 2023.
- ZCIEA has developed sound relationships with councillors, Members of Parliament, Revenue Authorities, Local Authorities, Parliamentary Portfolio committees, Police and Relevant Ministries (SMES, Labour, Women and Gender, Youth and Indigenization).
- ZCIEA formed an alliance with CIPE, BVTA, ZCBTA, WABAZ and VISET to push for a comprehensive policy framework on the informal economy for submission to the government.
- An Informal Economy Agenda was developed, and six Informal Economy Agenda meetings
 were held. These brought together key stakeholders from ZIMRA, Office of the President and
 Cabinet, Reserve of Zimbabwe, Ministry of Women Affairs and SMEs Development, Ministry
 of Finance, Ministry Local Government, Ministry of Public Service, Labour and Social Welfare,
 Ministry of Home Affairs, Parliament of Zimbabwe, Gender Commission, Zimbabwe Human Rights
 Commission, Parliamentary Portfolio Chairpersons, Members of Parliament, Confederation of
 Zimbabwe Industries, Buy Zimbabwe, Veritas, Economist, Labour Research Institute of Zimbabwe,
 Midlands State University, Media, Informal Economy Organisation, ILO and USAID.
- 2. These meetings discussed the seven key thematic areas that concern the informal economy, and can influence a productive formalisation strategy in Zimbabwe, namely,
 - (i) recognition of and respect for the informal economy
 - (ii) development of linkages;
 - (iii) market access and infrastructure;
 - (iv) formalization;
 - (v) financial inclusion;
 - (vi) social protection; and
 - (vii)devolution.



- Lobby and advocacy work at grassroots level has produced some good relationships between
 workers in the informal economy and the local authorities. The major target was for all 46 ZCIEA
 territories to complete the year 2019 having signed Memorandum of Understanding with their
 relevant authorities. All territories have embarked in this process, and currently 29 territories
 have signed Memorandum of Understanding with their local authorities.
- ZCIEA has engaged in political advocacy including lobbying the Chief whips of the main
 parliamentary parties, the ruling ZANU PF and main opposition party, MDC. It has also engaged
 the Portfolio Committee on Governance, to influence Policy change and for recognition of workers
 in the informal economy.
- In 2005 ZCIEA made inputs on the Bill on genetically modified foods. These inputs contributed to the blocking of the Bill in Parliament.
- ZCIEA successfully petitioned the Ministry of Finance on issues pertaining to the following concerns:
 - Sudden increase in tariffs for imported second hand clothes, which did not include designer clothes sold by established boutiques.
 - The discriminatory imposition of tariffs on any other second-hand commodities brought in by informal businesses while the same was not done to Chinese outlets which brought in designer clothes in containers.

Trading, working spaces, membership welfare and court cases.

- Lobbied for 27200 market operational places for its membership across the whole country. The beneficiaries included 16600 women and 10600 men.
- Establishment of an internal revolving fund scheme that has benefited 3800 members.
- Developed an online marketplace for workers and traders in the informal economy to market their goods and services online.
- Facilitated the allocation of 3749 low-cost housing stands for its members, including 2853 women.
- Instituted litigation on defence of members' rights and won five court cases in Chitungwiza, Gweru, Bulawayo, Triangle and Mutare on issues to do with their trading space. ZCIEA initiated cases before the High Court opposing closing down of informal economy workspaces during the Covid-19 pandemic.
- Accessed 16 rooms for service provision such as tailoring and hairdressing at the Old Granted Hotel Building in Kadoma. 37 members had faced victimization by the owner of the building because they were members of ZCIEA. The matter was addressed through ZCIEA legal advisors.
- Secured positions on boards of institutions that affect the informal economy, such as the Zimbabwe Occupational Health and Safety Board and the National Aids Council (NAC).

Regional and international networking and advocacy

- ZCIEA lobbied the Southern Africa Trade union Coordinating Council (SATUCC) for the committee to deal with experiences and problems of workers in the informal sector in the sub region.
- Successful lobbied African governments and international trade unions to support the inclusion and protection of informal economy workers in the ILO Violence and Harassment Convention, 2019 (No. 190).



- Affiliation to regional and international bodies concerning workers in the informal economy.
- An affiliate of StreetNet International where ZCIEA was chosen as the East and Southern Africa
 focal point organisation for StreetNet. ZCIEA National President, Ms Lorraine Sibanda was elected
 as StreetNet International President. She was the first Black President, first Woman President and
 First African President at StreetNet International. She was re-elected for two additional terms
 running from 2016 to 2023 and 2023 to 2027.
- Signed a Memorandum of Understanding with IFWEA in 2018. The ZCIEA Secretary General was selected as a member of the IFWEA Executive Board.



ZCIEA President, Lorraine Sibanda

Campaign Poster for StreetNet International Presidential Campaign 2023

Source: ZCIEA



Lorraine Sibanda with StreetNet International Executive Council (2019)

Source: StreetNet International



Research and publications

- ZCIEA has participated in the production of the Millennium Development Goals Report and the Human Development Report in Zimbabwe since 2003.
- Participated in the 2021 IIED Research on the effects of Climate Change in the Informal Settlements and the informal economy and the behavior of such communities. (Masvingo and Harare).
- GGA Research on effects of COVID-19 on the informal economy.
- World Bank Research on how COVID-19 affected the informal economy entrepreneurs and possible pathways for resuscitation, 2020.
- University of Pretoria in conjunction with University of Zimbabwe- Research on COVID-19 effects on the contribution of informal economy to developmental growth. (Harare, Bulawayo), 2021.
- ZCIEA has also contributed to various research projects by major national and international bodies, including: the International Labour Organisation (ILO); Labour and Economic Development Research Institute of Zimbabwe (LEDRIZ) and Zimbabwe Congress of Trade Unions (ZCTU).
- Research with WIEGO on the COVID-19 effects on StreetNet International affiliates.
- Participated in collaborative research with USAID on Youth Employment and Informality An
 Informal Economy Assessment in Zimbabwe (2021 2022) in partnership with Bulawayo Vendors
 and Traders Association (BVTA), Deaf Zimbabwe Trust, Vendors Initiative for Social and Economy
 Transformation (VISET).

Constitutional reform and campaigns for democracy and rule of law

- ZCIEA participated in the campaigns for a new, democratic, inclusive Constitution including with
 progressive coalitions of social movements such as the Democratic United Front for a PeopleDriven Constitution and Women's Coalition. This eventually led to the adoption of the much more
 inclusive 2013 Constitution.
- In 2018, ZCIEA developed voter education materials in various vernacular languages. The
 materials were distributed to the respective territories. Through the voter education process
 ZCIEA managed to reach 6995 people directly and more than 35 000 people indirectly, thus far
 exceeding the intended number of people stated in the proposal of 5000..

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Group activities for Module 1: Tutorial Group Profiles

Module 1 has provided an understanding of the origin, history and nature of the informal economy in Zimbabwe. As such the Tutorial Group work that follows provides participants with an in-depth understanding of their informal economy groups. In your existing groups, please answer the following questions:

- 1. What is the name of your group and why did you choose that name?
- 2. What is the number of persons in the group and how many members of the Group are:
 - a. Women
 - b. Men
 - c. Youth (less than 35 years old)
- 3. How many of your group members are:
 - a. Informal traders, hawkers, vendors, cross border traders?
 - b. Engaged in agriculture, fishing, horticulture, mining?
 - c. Engaged in home industries and cottage industries like carpentry, welding, manufacturing e.t.c?
 - d. Engaged in businesses like shops, restaurants, bottle stores, transport operators?
 - e. Other activities (please specify......)
- 4. How many of your group members:
 - a. Have current licenses/permits from their town/ city councils?
 - b. Are registered as companies with the Registrar for Companies?
 - c. Are registered as co-operatives with the Registrar of Co-operatives?
 - d. Are registered with ZIMRA or have had a tax clearance certificate in the last two years?
 - e. Operate as a voluntary group and how many members are in the group?
 - f. Employ five or more employees? Are these permanent or casual/contract?
- 5. How many of your group members:
 - a. Completed Grade Seven?
 - b. Completed Form 4?
 - c. Completed Form 6?
 - d. Attended College or university?
 - e. Did not get an opportunity to attend any school (primary or secondary)?



MODULE 2:

INTRODUCTION TO LAW

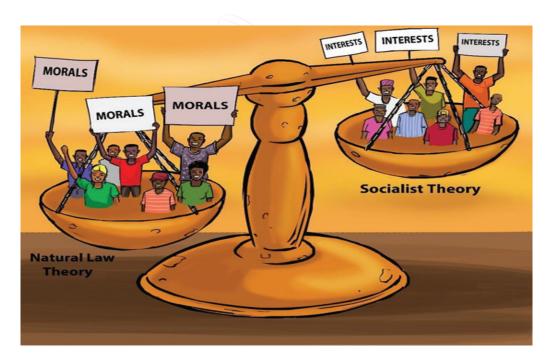
This Module has four units:

- 1. Definitions, principles and purpose of law
- 2. Divisions of laws
- 3. Sources of laws
- 4. Understanding the State and making of law

Module 2/Unit 1:

Definitions, principles and purpose of law

(a) Definitions: What is Law?



There are different theories on the meaning of the concept of "law." The traditional or most accepted definition of law is:

"a set of rules and regulations that govern human conduct and is enforceable by organs of the state such as the police and the courts."

This definition reflects a theory of law called Positivism, which says that "law is law regardless of its morality or fairness."

This theory has been dominant under capitalism. However, there are other theories that contest the traditional definition. These include the natural law theory and the socialist theory.



Natural Law theory

This theory sees law as emanating from the Law of God or Divine Law, to which all human laws must abide to.

The purpose of Law is to ensure justice as per the Will of God. Any human law which deviates from the Law of God is not a valid law.

This is summarized in the principle by St Augustine called - lex injusta non est lex - an unjust law is no law.

The natural law theory influenced radical African Nationalists like Nelson Mandela during the anti-colonial struggles who refused to obey racist colonial laws on the basis that they were not just laws

Socialist theory

Holds that laws arose at a certain stage of development in society about 700 years ago when classes and private property emerged, dividing society into hostile groups between the rich and the poor, women, and men.

The Law and the State arose to contain this conflict but doing so in a manner that served first and foremost the interests of the dominant economic and political elites. Law cannot therefore be separated from class. Thus, the socialist definition of law is:

Law is an aggregate of rules of conduct which have a class character; they express above all the will of the economically and politically dominant class of the society and defend primarily the interests of this class.'⁷

(b) Principles of Law

Law belongs to the family of what are called social bonds or social norms. In general, law provides a measure or a standard found in any society to ensure that its members adhere to the values and norms of that society. Law ensures the stability and functionality of the society. Other important characteristics of the Law are morality, ethics, traditions, customs and religion.

- Morality refers to the evaluation and search for the supreme or ideal good or values that individuals / society should strive for, what is 'good' and 'bad.'
- Customs refer to 'the observance by man of socially accepted modes of behaviour.'

Law can be distinguished from other social norms by the following principles:

(i) General and uniform application

The law is applied generally and uniformly across the whole of society. The law is not applied selectively, but equally to all people provided they fall into the same classification. For example, if Jack is walking along a road, Peter is cycling and Henry drives a car, they fall into different categories of road users. A rule pertaining to one does not necessarily apply to the others. Each is governed by laws applying to the activity he or she is engaged in.

⁷ K Makamure, "A comparative study of comrades courts" Z.L.Rev. Vol. 3 1985, 42.



(ii) Certainty and institutionalisation

Law is a system of norms that are interdependent and co-ordinated, created and enforced by systematic bodies in society. A good law must be clear and unambiguous and must be declared and published before it can be applied. People should be informed of the existence of a law and must conduct their affairs in sure anticipation of the consequences.

In Zimbabwe all Acts of Parliament and Statutory Instruments are published in the Government Gazette and once published members of the public are deemed to know the law.

(iii) Authoritative source

Laws are promulgated by a sovereign authority and must come from a recognised authority. In Zimbabwe, the law-making authority is vested in the Legislature (Parliament and the President). Parliament can however delegate its law-making powers to some other bodies e.g., Local Authorities and Ministers. Laws emanating from these other bodies are known as Statutory Instruments and must always be intra-vires the Enabling Act of Parliament.

(iv) State-enforced

Adherence to the law is demanded on pain of some coercive sanction being applied against the offender by the State. This is different from adherence to ethical or moral norms that may be based on some individual or subjective imperative or consciousness or social disapproval or approval.

(c) Purpose of Law

The mainstream theory of law (Positivism) outlines two main purposes of law, as follows:

To preserve peace and order	Justice
Since the emergence of Law, 7000 years ago, a principal purpose of the law has been to maintain peace and order in society so that people can go about their ordinary activities, in particular production of the necessities of life and society. Doing so without being harmed or disturbed or attacked or robbed of their property. Law maintains order in so far as it ensures that as one enjoys one's rights, they do not do so in a manner that clashes with the rights of others	According to traditional theory, the second objective of law is to ensure that there is fairness and justice in the application of rules. The word justice is derived from the Latin word "iustus". This means that which is "just", "right", "honest", "appropriate", [or] "correct". Therefore, justice can be defined as 'What appears to be right and just to a fair-minded person'. Professor Madhuku argues that "to say that law must serve the ends of justice is to promote the view of justice shared by those whose perceptions dominate a given society."

It is important to note that there are other theories that take a different view, although they all accept that a major purpose of law is the maintenance of peace and order. They disagree on the justice objective that is submitted by mainstream theory. Some of these theories include the following:



(i) Natural Law Theory

The theory of Natural law states that the main purpose of human laws is to fulfill the Will of God on Earth. The Law of God provides all human beings with certain inalienable and fundamental rights including the rights to life, property, equality, happiness and to self-defence if one's rights are attacked by others. The exception is those that God has manifestly set out to a lower position, such as women to men in Genesis 3:16. ⁸ The Law of God also places duties on all humans. These include: the duty to love one another, to assist one another, to be reasonable and fair when we punish those who have offended us.

(ii) Feminist theory

The Feminist theory says that the experience of law has been unfair on women. It contends that laws have exhibited vertical and horizontal discrimination against women, thus upholding and defending patriarchy. An example of a Feminist Law is the Masters and Servants Act that held that a husband could cancel the contract employment of his wife. Another example is under African customary law that a daughter cannot be an heir to her father. Under the 1923 Constitution of Rhodesia all women were not allowed the right to vote in national elections or hold public office.

For the law to be just, the Feminist theory holds that these institutionalised discriminatory practices and effects of past discrimination be removed and that there be gender affirmative action. Feminist principles are now provided in the 2013 Constitution of Zimbabwe.



⁸ L Madhuku, An Introduction to Zimbabwean Law, Weaver Press, 2010, p 5.



(iii) African Nationalist theory

The African Nationalist theory holds that under colonialism the law exhibited institutionalised vertical and horizontal segregation against blacks, including in the informal economy and rural areas. It calls for a need to reform the law to address these historical injustices, including affirmative action for blacks, including in the informal economy. This was well put by Professor R Zvobgo on the reasons behind the establishment of Herbert Chitepo Law School:⁹

Herbert Chitepo School of Law is not just a law school. It seeks to tie together the teaching, understanding and practice of law within the context of African culture. Law was used to subjugate the Africans, the violent dispossession of all Africans... Until we begin to transform the law; to understand it is the knife which cuts the bread, then we have not yet started using the law as an effective tool for human development and advancement.

(iv) Socialist theory

The Socialist theory is similar to the feminist theory and African Nationalist theory, but goes further to state that the primary purpose of Law in any society is to advance and protect the interests of the dominant economic and political class of that society. Law is considered to be a primary tool of the ruling class to protect its private property and maintain its control of society including the state. Thus, contrary to the liberals' position that the purpose of law is to achieve justice, a key feature of law for the 126 years of capitalism in Zimbabwe is that the content of law has been elitist, hierarchical, discriminatory, and exclusionary against blacks, women, rural farmers, workers and the informal economy. It has promoted white supremacy and capitalism, privileging male, white local and international capitalists against the black rural and urban working people majority¹⁰

In all societies where the primary wealth, resources and property of society are owned and controlled by a minority of people as private property, with the exclusion of the majority from ownership or control of such property, then such economic minority ends up being the politically dominant class in control of the state, with the major laws and constitutions of that society primarily reflecting the dominance and interests of such group, against the property-less working majority.

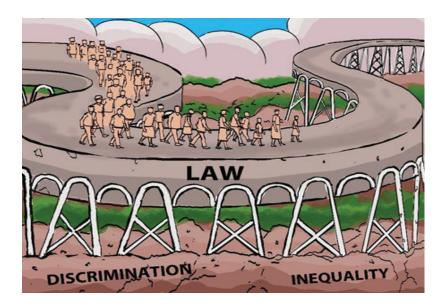
Nonetheless, there are positive aspects of the law. There are some elements that are good, such as reforms after independence that removed formal racial and gender discrimination or the positive gains for workers, women, workers and the informal economy in the 2013 Constitution.

⁹ R Zvobgo, "Chitepo Law School: A history and celebration" The Herald 25 September 2014.

M Gwisai, Gwisai M, "Constitutional Reform in Zimbabwe: History and Way Forward," 2 Kempton Makamure Labour Journal (2009) 26.



(d) Law and change



Laws have not been static: they have changed over time. Law exhibits some dynamism, for instance, laws have changed from direct racial and gender discrimination against blacks and women in the colonial period to a universal content based on equal treatment of all after independence in 1980.

Furthermore, the 2013 Constitution enshrines rights for workers, the informal economy and women and provides democratic rights like the right to demonstrate, strike and free and fair elections.

Such changes are progressive and must be defended. They have improved the condition of ordinary people and ameliorated unequal, and unfair racial, and gender discrimination. They have also allowed previously marginalized groups (such as blacks and women) to be recognized in society. However, the continued sacrosanctity of private property has meant continued inequality inherited from colonialism. This time substantive or de facto inequality and not formal inequality. As argued by Russian revolutionary leader V.I. Lenin, - "No laws on earth can abolish inequality and exploitation so long as production for the market continues, and so long as there is the rule of money and the power of capital."

This is why the most vicious and ruthless attack on urban informal economy workers and entrepreneurs in the history of this country happened in 2005, Operation Murambatsvina, yet the Government was now under black majority rule. Equally in January 2019, when the ZCTU called for a General Strike and National Shutdown to protest a tripling of fuel prices that affected workers and the poor, the Government responded harshly, killing over a dozen protestors. Thus, despite the positive changes, law has in essence remained primarily an instrument of class, gender and racial exploitation and oppression. This is so as law is enforced by a judiciary drawn from the elites, especially at the top courts.

The key factors behind major changes in the law have been social struggles, in particular class struggles but also racial and gender struggles between the dominant economic elites and those marginalized. It has not been the enlightenment, charity or benevolence of leaders, judges or Members of Parliament that have changed the character of laws, but rather the struggles of the marginalized groups. The victories and defeats of contesting classes, and social groups in such struggles have been reflected in law including constitutions:¹¹



Law and Change: Class struggle

The history of constitutional reform in Zimbabwe... shows that the most important factor in determining constitutional reform has been social struggles, especially inter-class struggles between the oppressor and exploiter social groups in charge of the economic wealth of society and the state and the working but oppressed and exploited majority.

Other struggles especially by women and oppressed racial, ethnic, or religious groups have also contributed significantly, albeit secondarily. Constitutions have acted as the mirror of the victories and defeats scored and suffered by the contending classes and social groups in general social struggles. In other words, constitutions reflect the balance or product of inter-class and social struggles.

The stronger, more united, and more militant and class-conscious the struggles of working people have been the more democratic rights they have won in constitutions, and the converse applies when they have been weaker, divided, or followed the class ideas of their rulers.

M. Gwisai, 2009



¹¹ M Gwisai (2009) n. 11 Above



Group Activities for Module 2/Unit 1

This unit has demonstrated the definition of law, principles of law, and the purpose of law. You have also been able to learn that law is not static but is subject to change.

You are therefore required to answer the following questions in your existing groups:

- 1. What are some of the principles of law?
- 2. What authority is responsible for law enforcement?
- 3. Have there been some changes in the law of Zimbabwe that are relevant to the informal. Discuss some of these changes and state how they have benefitted workers in the informal economy in Zimbabwe.
- 4. What changes would you propose to the current laws of Zimbabwe to make the informal economy better for workers?





Module 2/Unit 2:

Divisions of Law

The Law may be conveniently divided into five branches.

(a) National Law vs international law

International law refers to rules, which are binding on states across the borders in their relationships with one another. National law refers to a particular country's rules which are binding in that particular country.

(b) Criminal Law vs Civil Law

Law may also be divided into criminal law and civil law. There are three main differences between Civil Law and Criminal Law.

Civil Law	Criminal Law
(i) Civil law involves a wrong committed against another person.	Criminal law deals with crimes (wrongs) against the State.
(ii) The case is resolved at the civil court and does not necessarily involve the police.	The case is resolved in the criminal courts, and it involves the Police.
(iii) The main objective or intended result is to get compensation for the person who has been wronged.	The intended objective or result is to punish the offender and in most cases a jail sentence.

(c) Public law vs Private law

Public Law refers to the rules regulating public relations where the State is a party to the issue e.g., Criminal Law, Tax Law, Constitutional Law, and Administrative Law. On the other hand, Private Law refers to the rules regulating relations of private individuals, i.e., where the state is not directly involved e.g., the law of property, the law of contract, and family law.

(d) Substantive Law vs Procedural Law

Substantive law deals with the nature of specific rights and duties that persons have. Procedural law deals with rules that govern the enforcement of these rights and duties i.e., steps that must be followed to enforce the rights.

(e) Constitutional Law

This law defines the relations between an individual and the state mainly through the Declaration of Rights as well as public law including the establishment, regulation, and powers of the legislature, executive, and judiciary as well as the independent commissions.



Group Activities for Module 2/Unit 2

You have learned about different branches of law. Please answer the following questions:

- 1. Name some of the branches of law that you have learned?
- 2. Considering the Constitution of Zimbabwe 2013 as one of the key branches of law, please state some of its provisions that are particular to the informal economy workers of Zimbabwe.
- 3. How has the Constitution of Zimbabwe 2013 benefitted the informal economy workers in Zimbabwe?
- **4. What** improvements would you like to be made on the Constitution of Zimbabwe 2013 to improve the welfare of informal economy workers in Zimbabwe?





Module 2/Unit 3:

Sources of Law



A source simply refers to where something is derived from. Law is derived from different sources such as common law, legislation, custom, authoritative texts, and international Treaties and conventions. The following are the various accepted sources of law.

(a) Constitution of Zimbabwe

The Constitution of Zimbabwe ¹² is the Supreme law of the land and any other law which is inconsistent with it is deemed void to the extent of that inconsistency. Therefore, Zimbabwe has Constitutional Supremacy instead of Parliamentary Supremacy. Section 2 of the Constitution states that:

Section 2 (1)	Section 2 (2)
This Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency	The obligations imposed by this Constitution are binding on every person, natural or juristic, including the State and all executive, legislative and judicial institutions, and agencies of government at every level, and must be fulfilled by them

The Constitution is given this special place in the hierarchy of laws because in principle, it is considered to be the word of the people themselves. It is legislated by the people. In many democratic systems of government, constitution-making involves the direct participation of the people through a referendum, thus reducing the role of the legislature to the mere formality of 'enacting the Constitution as approved by the people'. Thus, there is a hierarchy within the legislative source of law: the Constitution is supreme and is followed by ordinary Acts of Parliament and then by statutory instruments.

Constitution of Zimbabwe Amendment (No. 20) Act, No. 1 of 2013.



(b) Legislation



Parliament of Zimbabwe, Source:24newsonline

Legislation refers to the law validly enacted by the legislative authority of Zimbabwe and assented to by the President of Zimbabwe. In Zimbabwe the legislative authority of Zimbabwe vests in Parliament and the President. Section 116 of the Constitution provides:

116. The Legislature of Zimbabwe consists of Parliament and the President acting in accordance with this Chapter.

There are two forms of legislation in Zimbabwe, Acts of Parliament, and Statutory Instruments. Both hold the same legal force except that a Statutory Instrument should be consistent with the relevant Act of Parliament delegating the authority to make that Statutory Instrument or else it is said to be ultra vires and for that reason void, if inconsistent with the relevant Act.

(i) Acts of Parliament

Legislation made by Parliament and assented to by the President is embodied in specialized documents called 'Acts of Parliament'.

(ii) Subsidiary legislation

The Legislature of Zimbabwe can confer powers on any authority to create binding laws. When these authorities exercise this delegated power, they create what is called 'subsidiary legislation' (delegated legislation) that is embodied in specialized legal documents called 'statutory instruments' (SI's). Section 134 provides conditions which subsidiary legislation must comply with, including:

- Parliament's primary law-making power must not be delegated.
- Statutory instruments must not infringe or limit any of the rights and freedoms set out in the Declaration of Rights.
- Statutory instruments must be consistent with the Act of Parliament under which they are made.
- The Act must specify the limits of the power, the nature and scope of the statutory instrument that may be made, and the principles and standards applicable to the statutory instrument.



- Statutory instruments do not have the force of law unless they have been published in the Gazette;
 and
- Statutory instruments must be laid before the National Assembly and submitted to the Parliamentary Legal Committee for scrutiny.

(iii) Duration of Acts

There are three ways in which an Act of Parliament may come to an end.

- Parliament may repeal the Act and it thereby comes to an end.
- S2 (1) of the Constitution provides for the supremacy of the Constitution. It follows therefore that even an Act of Parliament that has been duly passed and signed into law by the President is void if it is contrary to the Constitution.
- Through the effluxion of time in situations where an Act is meant to be of limited duration. For example, a statute may provide that it shall remain in force until a given date.

(c) Common Law

Common law refers to a body of laws outside legislation that were imposed by the British when they colonized Zimbabwe in 1890. This body of law is called Roman Dutch common law because it is derived from the body of laws combining Dutch customary laws and Roman laws that emerged in the Dutch Republic in Europe in the 17th Century. In 1652 the Dutch established a colony in South Africa, the Cape of Good Hope where they imposed Roman Dutch common law as the law in the new colony. In the early 1800s, the Cape was colonised by the British who decided not to change the law but to modify it with English common law. This resulted in a hybrid of Roman-Dutch Law and English Law.

When the British colonized Zimbabwe around the year 1890, they were led by Cecil John Rhodes' private company under the name the British South Africa Company. The British used Cape colony as their launch pad and decreed that the law applicable at the Cape Colony as of 18 June 1890 would be the law of the new colony together with legislation to be passed. Thus, the common law of Zimbabwe became Roman-Dutch Law with English Law influence.

At independence, the former constitution stipulated the continuation of Roman Dutch common law. Section 89 provided that the law, which was applicable at the Cape Colony as of 18 June 1890 would remain the common law of Zimbabwe. This was carried through in the new Constitution through s 192.

Under s 176 of the Constitution the Constitutional Court, the Supreme Court and the High Court inherent power to develop the common law considering the interests and the provisions of the Constitution.

(i) Judicial Precedents

The role of the judiciary (courts) as an arm of government is to interpret the law and resolve disputes according to the law. The judiciary does not make the law.

However, situations arise where the law is not clear and there is a gap in the law. In trying to solve such problems, judges find themselves making the law. Then if a similar situation arises for there to be certainty in the law, the judge should follow the courts previous decision. This process of following a previous decision is called **stare decisis** (standing by the decision).

Not everything that the court says is binding. What is binding are the reasons for arriving at a particular judgment known as **ratio decidendi** (rationale for judgment).



Statements made by the judge in passing of a judgment and not related to the case are called **obiter dictum** and are not at all binding. These statements, however, are of high persuasive value in future similar cases.

Decisions of the Constitutional Court are binding on all other courts on constitutional matters. Decisions of the Supreme Court are binding on all other courts; however, the Supreme Courts is not bound by its own decisions. It is flexible and can change its previous decision if convinced that its earlier conclusions were wrong. Decisions from foreign courts are not binding but have high persuasive value.

Examples of judicial precedent include:

- Freedom of Assembly and Association, the case of In re Munhumeso and others 1994 (1) ZLR 43 (S)
- Freedom of Conscience, the case of In re Chikweche 1995 (1) ZLR 235 (S).

(ii) Law Reports

As already indicated, Zimbabwe observes the doctrine of judicial precedents. Judgments from superior courts such as the Constitutional Court, Supreme Court and the High Court are usually reported in the Zimbabwe Law Reports (ZLR) which is a series of compiled judgements settling debatable principles of law. Judgements which are not reported in the ZLR are called 'unreported judgements. They, however, have the same value as the 'reported' ones. In interpreting the law therefore, one may give reference to the cases reported in the Zimbabwe Law Reports.

(iii) Custom

These are rules observed by the community for a very long period of time and they become binding in the course of time. For a custom to become law it must have been practiced for a long period of time and well known by members of the community. An interesting case is that of Van Breda and Others vs Jacobs and Others 1921 AD 330:

Van Breda and Others vs Jacobs and Others 1921 AD 330

Where a custom was well observed by fishermen, that the first to cast his net in the shores owned the fish. The plaintiffs where the first to cast their nets and the defendants came later and also cast their net. The plaintiffs received the amount of the fish which the defendants caught after it was established that the custom was well observed among fisheries.

(iv) African Customary Law

The Constitution entrenches the recognition of African Customary Law. Section 162 provides that judiciary authority derives from the people of Zimbabwe and is vested in the courts which comprise amongst others the customary law courts.

Section 192 of the Constitution provides that the "law to be administered by the courts of Zimbabwe is the law that was in force on the effective date, as subsequently modified." The law that was applicable on the effective date included African Customary Law per the dictates of s 89 of the former Constitution.

Whether or not customary law applies in a particular case is governed by the provisions of the Customary Law and Local Courts Act. 13



In terms of this Act, customary law applies under two circumstances, namely:

- Where the provisions of a relevant statute say so.
- In the absence of a relevant statute, by applying the 'choice of law formula' in Section 3 of the Act.

There are certain areas of the law in which Customary Law does not apply for instance customary law does not apply in the settling of criminal matters and mine boundary disputes. It ordinarily applies in areas such as marriages, inheritance and other delictual matters such as adultery.

Customary courts have no jurisdiction in criminal matters. Section 193 of the Constitution states that the Constitutional Court, the Supreme Court, the High Court and magistrates' courts are the only courts which "may exercise or be given jurisdiction in criminal cases."

Under s 176 of the Constitution, the Constitutional Court, the Supreme Court and the High Court have inherent power to develop the common law or the customary law, taking into account the interests and the provisions of the Constitution.

(v) Authoritative Texts

This refers to the opinions of renowned jurists and academics published in books, articles, and journals. They may be used as persuasive authority in developing a particular law.

(vi) International Law

International law governs relations between states. According to section 327 of the Constitution, international treaties and conventions do not automatically become law, unless they have been ratified and enacted into law by Parliament in the case of Zimbabwe.

However, principles set out in basic human rights international law may apply directly in Zimbabwe as customary international law under section 326 of the Constitution. This includes principles set out in the Universal Declaration of Human Rights, the African Charter on Human and Peoples Rights, CEDAW, and the SADC Social Charter.

The International Labour Organization (ILO) was established in 1919 as a specialised agency of the United Nations to deal with labour issues. The ILO sets minimum labour standards through Conventions and Recommendations. ILO Conventions and Recommendations are important to the working class all over the world and one of the purposes of the Labour Act is to give effect to these standards.

Conventions: These are instruments, which upon ratification by a member State create legal obligations for that member.

Recommendations: These are instruments, that contain standards, designed to encourage the direction to be followed by Member States giving guidance to policy, Legislation and Practice. Recommendations are not meant to be binding in nature. A very important Recommendation dealing with the rights of workers in the informal economy is Formal Economy Recommendation, 2015 (No. 204).

The ILO is composed of 187 member States, with Zimbabwe having joined on 6 June 1980. To date, the body of ILO standards comprises 402 instruments: 190 Conventions, six protocols, and 206 Recommendations. Zimbabwe has ratified 26 Conventions and one Protocol. Some apply to workers in wage labour and others apply to the informal economy. There are ten core ILO Conventions that apply to all ILO members, and Zimbabwe has ratified nine, with the notable exception of Convention No. 187 on Promotional Framework for Occupational Safety and Health of 2016.

¹³ Section 3 Customary Law and Local Courts Act [Chapter 7:05].



Ten Core ILO Conventions

Title	Year	Con. No
Forced Labour Convention	1930	C 29
Abolition of Forced Labour Convention	1957	C 105
Freedom of Association and Protection of the Right to Organise	1948	C 87
Right to Organise and Collective Bargaining	1949	C 98
Equal Remuneration Convention	1951	C 100
Protection against Discrimination (Employment and Occupation) Convention	1958	C 111
Worst Forms of Child Labour Convention	1999	C 182
Minimum Age Convention	1973	C 138
Occupational Safety and Health Convention	1981	C 155
Promotional Framework for Occupational Safety and Health	2016	C187

Group Activities for Module 2/Unit 3

You have learned about various sources of laws that are applicable to Zimbabwe. Please answer the following questions in your existing groups:

- 1. What are some of the sources of laws governing Zimbabwe?
- 2. What are some of the ILO Core Conventions that have been ratified by Zimbabwe?
- 3. How has the ILO Core Convention No. 187 benefitted the informal economy workers in Zimbabwe?
- 4. What are some of the ILO Conventions that you would wish to have Zimbabwe ratify and why?



Module 2/Unit 4:

Understanding the State, Court Systems and Structures

(a) Understanding the State

There are three main organs of the State namely, Legislature, Executive and Judiciary. These organs were created based on the doctrine of "Separation of Powers".

The doctrine is based on the belief that to facilitate democracy and the rule of law, power should not be concentrated on one individual or organ of the Government. The arrangement facilitates checks and balances by one organ against the other to avoid abuse of power.

The doctrine of "Separation of Power" does not however mean that the three arms of government must work separately from each other. In fact, the three arms must complement each other. No arm of government must interfere with the other arm.

(i) Legislature

According to section 116 of the Constitution, the legislation consists of the President and the Parliament. It is responsible for making the law. It can make or repeal any law except that which contravenes the Constitution. Therefore, the sovereignty of the legislature is limited by the Constitution.

The legislature, however, can delegate its law-making powers to other bodies. The most common delegation is where a Minister administering an Act is given powers to make the regulations in terms of the Act. The other form of delegated law-making powers is exercised by Local Authorities e.g., Municipal Authorities through enacting by-laws. Collective Bargaining Agreements entered voluntarily by Trade Unions and Employer Organizations become Statutory Instruments when registered and therefore have a force of law.

(ii) The Executive

Section 88 of the Constitution explains that the executive powers of government are vested in the President acting through a Cabinet. Law enforcement agencies also form an integral part of the Executive. The executive arm of the government is responsible for formulating and implementing government policies as well as enforcing the law. The executive also initiates and proposes laws that support its policies.

(iii) The Judiciary

The judiciary is the arm of the government responsible for interpreting the law made by the legislature and resolving disputes according to the law. According to section 163 of the Constitution, the Judiciary is made up of Judges of the Constitutional Court, Supreme Court, the High Court, Labour Court, and Administrative Courts and includes Magistrate Courts, Community Courts and Customary Law Courts. Clearly if all powers of government were to be concentrated in the hands of one individual, or one arm of the government, then the government would always act arbitrarily. The judiciary curtails such developments.



(b) Making of the Law

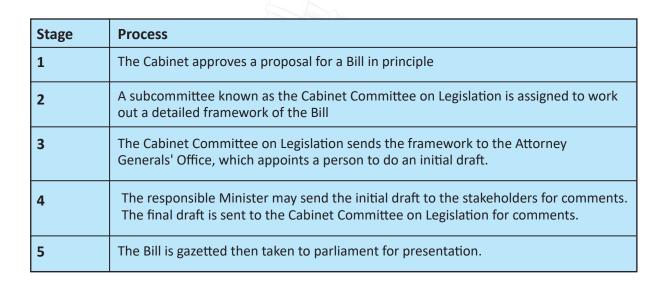
In order to appreciate the legal system in Zimbabwe, one needs to understand all stages involved in the development of law. The law-making process is governed by sections 130, 131 and the Fifth Schedule of the Constitution. Parliament makes law through debating special proposals known as Bills and transforming them into Acts of Parliament. A Bill only becomes law after approval by Parliament and after it has been assented to (signed) by the President. The Parliament comprises the Lower House, which is the National Assembly, and the Upper House, which is the Senate.

(i) Pre Bill stage

The Pre Bill stage involves policy formulation and initiation of proposals. A proposal may originate from any source, such as a pressure group (e.g., The Domestic Violence Bill), a Report of a Commission of Enquiry or a Parliamentary Committee.

Role of the public

Apart from being part of a pressure group that initiates proposals to a Bill, ordinary citizens may also initiate proposals through the Law Development Commission, which will consult stakeholders and refer the proposals to the relevant Minister.





(ii) Stages in Parliament

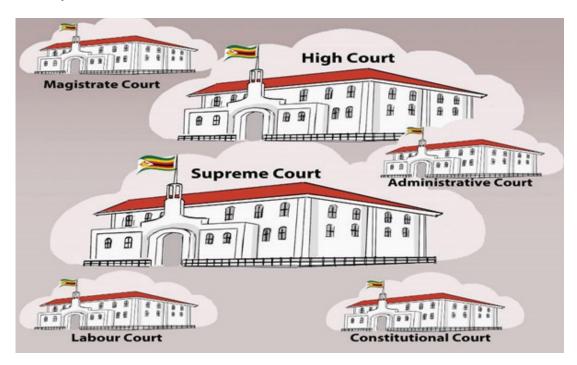
The Bill will go through various stages in Parliament and to the President before it is enacted into law. Below is a summary of the main stages.

No	Stage	Process
1	First Reading Stage	The title of the Bill is read by the Clerk of Parliament and is deemed to be read for the first time.
2	Parliamentary Legal Committee (PLC) stage	The committee scrutinizes the Bill and checks its conformity with the Constitution. If the Bill does not conform to the Constitution, the PLC will make an adverse report, which is debated in Parliament, and the Bill will be returned for amendment. If the Bill conforms with the Constitution, it shall proceed to the next stage
3	Second Reading stage	The responsible Minister gets an opportunity to make a second reading of the Bill, outlining the purpose and principle upon which it is based. The chairperson of the relevant Portfolio Committee presents her/his Portfolio Committee Report based on public hearings conducted by the Committee on the Bill, if any, concerning the principles of the Bill.
4	Committee stage	A standing Committee selected by Parliament or even the entire House will analyse individual clauses of the Bill and debate possible amendments.
5	Report stage	If there are any amendments to the bill, these are referred to the Parliamentary Legal Committee to check conformity to the Constitution
6	Third Reading stage	This is the voting stage or passing of the Bill. A majority vote of Parliament will pass the Bill and once passed it gets to the next stage. If it is a constitutional bill, it requires a two thirds majority.
7	Transmission to another House	Once the Bill is passed, it is passed to the other House (Senate) and goes through the same stages as above in order to be certified by the Clerk of Parliament. For a Bill to become law, both the Lower and Upper Houses before Presidential Assent, must approve it. However, if there are disagreements within 90 days then the views of the Lower House shall prevail over the upper House.



No	Stage	Process
8	Presidential assent	After passing through the Parliament by majority vote the Bill is sent to the President for signature and once signed it is gazetted in the Government Gazette and becomes law, unless a statutory instrument provides a set effective date. If for any reason the President withholds his/her signature to a bill, then
		the bill shall be returned to Parliament with the President's written reasons for reservations. If Parliament passes the Bill it shall be returned to the President for assent, and who shall either assent or refer it to the Constitutional Court for
		constitutionality check. If the Constitutional Court confirms the Bill to be constitutional, the President will assent to the Bill and sign it.

(c) Court System and Structures



The court system is made up of a hierarchy of courts involving lower courts to the superior courts. The highest court is the Constitutional Court on constitutional matters and the Supreme Court in all other matters.

(i) Magistrates Court

The Magistrate's Court is the lowest criminal and civil court in Zimbabwe. Its jurisdiction and composition is found in the Constitution, the Magistrates Court Act [Chapter 7:10], The Criminal Procedure and Evidence Act [Chapter 9:07] and the Magistrates Court (Civil) Rules, SI 11/2019.

The Magistrates Court has both criminal and civil jurisdiction as may be limited by the law. The jurisdiction of the Magistrates Court is territorial i.e., a case committed in Hwange cannot be heard in Harare.



Appeals on matters (both criminal and civil) handled by the Magistrates Court will go to the High Court. The Magistrate's Court is a subordinate court to the High Court and falls directly under the supervision of the High Court. In stated instances some of the Magistrates Court decision are taken for automatic review by the High Court.

(ii) High Court

The High Court is a superior court of record created under section 170 of the Constitution. Its jurisdiction and composition are in terms of sections 170 and 171 of the Constitution and the High Court Act [Chapter 7:06], Criminal Procedure and Evidence Act [Chapter 9:07] and the High Court Rules, SI 202/2021 and the High Court (Commercial Division) Rules SI 123/2020.

In terms of section 170 of the Constitution, the High Court is presided over by the Chief Justice, the Deputy Chief Justice, the Judge-President of the High Court, and such other judges as may be appointed.

In terms of s 171 of the Constitution, the High Court "has original jurisdiction over all civil and criminal matters throughout Zimbabwe." An Act of Parliament may provide for the exercise of jurisdiction by the High Court. Section 171 provides further details of circumstances of the jurisdiction of the High Court, namely that the High Court:

- has jurisdiction to supervise magistrates' courts and other subordinate courts and to review their decisions.
- may decide constitutional matters except those that only the Constitutional Court may decide.
- has such appellate jurisdiction as may be conferred on it by an Act of Parliament. For instance, appeals from the Magistrates Court go to the High Court.

(iii) Supreme Court

The Supreme Court is the final court of appeal for Zimbabwe, in all criminal and civil matters except in matters over which the Constitutional Court has jurisdiction – s 169 (1) Constitution. An Act of Parliament may confer additional jurisdiction and powers on the Supreme Court.

The relevant piece of legislation governing the operations of the Supreme Court is the Supreme Court Act 14 and the Supreme Court Rules, SI 84/2018.

The Supreme Court consists of the Chief Justice, the Deputy Chief Justice, no fewer than two other judges and any acting judges who may be appointed. See s 168 – Constitution. For exercising its jurisdiction, the Supreme Court is considered duly constituted if it consists of not less than three judges, one of whom must either be the Chief Justice or a permanent judge of the court.

If an appeal involves a difficult or important question of law, the presiding judge may direct that the appeal be heard by a greater number of judges. In such cases, the Chief Justice shall determine the size of the reconstituted court.

(iv) Labour Court

The Labour Court is the court established by s 172 of the Constitution and has such jurisdiction over matters of labour and employment as may be conferred upon it by an Act of Parliament.

The Labour Court is composed of a Senior Judge and such other judges of the Labour Court as may be appointed from time to time.

The Labour Act [Chapter 28:01] confers jurisdiction on the Labour Court to hear and determine appeals and applications in terms of the Act or any other enactment – s 89 (1).



No court, other than the Labour Court, shall have jurisdiction in the first instance to hear and determine any application, appeal or matter referred to in s 89 (1 of the Labour Act.). The procedure in the Labour Court is found in the Labour Court Rules, SI 150/2017.

An appeal from any decision of the Labour Court lies to the Supreme Court, but only on a question of law.

(v) Administrative Court

The Administrative Court is a specialist court set up in terms of s 173 of the Constitution. The court has such jurisdiction over administrative matters as may be conferred upon it by an Act of Parliament.

The Administrative Court is composed of a Senior Judge and such other judges of the Administrative Court as may be appointed from time to time.

The Administrative Court Act [Chapter 7:01] regulates the operations of the Administrative Court. Various Acts confer jurisdiction to the Administrative Court to hear appeals, applications for review or to hear matters as a court of first instance. The court mostly deals with appeals and applications for review against decisions made by various public authorities. Principles of administrative justice are provided both under s 68 of the Constitution and the Administrative Justice Act [Chapter 10:28].

(vi) Constitutional Court



The Constitutional Court is the highest court in all constitutional matters and its decisions on those matters bind all other courts. It has the power to make the final decision on the constitutionality of an Act of Parliament.

The High Court or the Supreme Court may make an order declaring an Act to be unconstitutional, but the order does not come into effect until the Constitutional Court confirms it. The Constitutional Court is established by section 166 of the Constitution.

Source: The zimbabwe mail

Constitutional Court of Zimbabwe

The Constitutional Court is currently composed of the Chief Justice, the Deputy Chief Justice, and five other Judges of the Constitutional Court. The Chief Justice may appoint a judge or a former judge to act as a judge of the Constitutional Court if the services of an acting judge of the Court are required.

¹⁴ Chapter 7:13.



Subject to the Constitution, only the Constitutional Court may:

- Advise on the constitutionality of any proposed legislation but may do so only where the legislation concerned has been referred to it in terms of this Constitution.
- Hear and determine disputes relating to election to the office of President.
- Hear and determine disputes relating to whether a person is qualified to hold the office of Vice-President; or
- Determine whether Parliament or the President has failed to fulfill a constitutional obligation.
- Rules of the Constitutional Court must allow a person when it is in the interests of justice and with or without leave of the Constitutional Court—
- To bring a constitutional matter directly to the Constitutional Court.
- To appeal directly to the Constitutional Court from any other court.
- To appear as a friend of the court.

Group Activities for Module 2/Unit 4

In your existing groups:

- 1. Discuss ways in which the public can influence law making processes under the current law-making procedures and stages provided for in the Constitution of Zimbabwe.
- 2. Do you support the separation of powers among the legislature, the Executive and the Judiciary in Zimbabwe, and why?
- 3. How has the labour court in Zimbabwe benefited the informal economy workers?
- 4. How improvements would you wish to be made in the labour court of Zimbabwe to make it more beneficial to the informal economy workers?

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MODULE 3:

INTRODUCTION TO POLICY REGULATORY FRAMEWORK FOR THE INFORMAL ECONOMY

This Module comprises three Units:

- 1. Right to work as a basic human right
- 2. The Constitution of Zimbabwe and the right to work
- 3. Policy framework on the informal economy in Zimbabwe

Module 3/Unit 1:

Right to work as a basic human right



Source:StreetNet International

The right to work is one of the most important rights provided for in all democratic societies and in the Constitution as well as international law. The Universal Declaration of Human Rights (1948,) which sets the standards of human rights internationally, provides that:

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work, and protection against unemployment.¹⁵



Thus, the right to work includes the freedom to choose work of one's choice, including in the informal economy. Such work should provide one with just and favourable conditions. The latter includes earnings that ensure an existence worthy of human dignity for everyone including a "standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."¹⁶



¹⁵ Article 23 (1) UDHR.

¹⁶ Per Article 11 (1) United Nations International Covenant on Economic, Social and Cultural Rights (1966), (ICESCR).



The right to work includes work in the informal economy because Section 24 of the Constitution of Zimbabwe recognizes the right to work as a national objective. It creates an obligation on the State and all institutions and agencies of the government to adopt reasonable measures within the limits of the resources available to them to provide everyone with an opportunity to work in a freely chosen activity in order to secure a decent living for them and their families.

The right to work "... is an inalienable right of all human beings." ¹⁷ In other words it cannot be taken away from a person because it is part of the right to life that every human has under section 48 of the Constitution. Without a means of livelihood, a person cannot survive. The right to life and the right to work are interdependent and inseparable. Violation of one leads to violating the other. This was well stated by the Supreme Court of India in a case called Olga Tellis v. Bombay Municipal Corporation and others. ¹⁸ The case recognized that persons who lived in slums and on pavements in the city did so because of economic compulsion. They did so in order to be near their informal places of work and could not afford transport costs of staying further away. They built sheds for work on public property but conducted their work peacefully without committing crimes, intimidating or insulting anyone. Taking away their sheds would be to take away their livelihoods, which the court held amounted to depriving them of the right to life. The court held:

Olga Tellis v Bombay Municipal Corporation

The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness, but it would make life impossible to live ... If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. ¹⁹

¹⁷ Article 11 (1) (a), Convention on the Elimination of All Forms of Discrimination Against Women (1979).

¹⁸ [1985] 2 Supp SCR Supl. (2) 51 (India).

Olga Tellis & Ors v. Bombay Municipal Council, [1985] 2 Supp SCR 51 (India).



Thus work, including work in the informal economy, is essential for all human beings because this is how most people secure their livelihoods. It is also a platform through which many who work find self-fulfilment and develop social relationships like friends and life partners. At the same time work is central to society at large. It is through work that all human societies produce the necessities of life like food, shelter, clothing, and that societies economically develop.

At the global level, the ILO has recognized the centrality of the right to work in the informal economy and has passed several instruments that reflect this.

The ILO Decent Work Agenda principles recognize as one of their four pillars the promotion of jobs, including in micro and small enterprises which account for more than two thirds of all jobs in Zimbabwe and globally, and most of which are found in the informal economy. It calls for states to develop policies that promote productive activities, decent job creation, entrepreneurship, innovation, and the formalization of enterprises in the informal economy, including an obligation to "do no harm" to existing livelihoods of workers wherever possible.

In 2015 the first dedicated ILO instrument to work in the informal economy including pathways to formalization, was adopted, namely the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). Other important ILO instruments also apply to workers in the informal economy including the ten ILO Core Conventions, the Violence and Harassment Convention, 2019 (No. 190), Home Worker Convention, 1996 (No. 177) and the Maternity Protection Convention, 2000 (No. 183).

In Africa, the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa recognizes, under article 13, the freedom of women to choose their occupation, including "economic activities within the informal sector" and places a duty on states to:

- establish a system of protection and social insurance for women working in the informal sector".
- take the necessary measures to recognize the economic value of the work of women in the home.

Although historically the law has ignored the development and needs of this thriving sector and concentrated more on the ever-declining formal economy, the legal basis of the right to work for informal economy employees is well established. The task is to use the law creatively and assertively as a vehicle for social and economic change and also respond to the realities of the day.

Group Activities for Module 3/Unit 1

In your existing groups, attempt the following questions:

- 1. Discuss the importance of the right to work as a basic human right in the informal economy
- 2. What are some of the ILO Core Conventions relevant to the right to work as a basic human right in the informal economy?
- 3. How has the right to work as a basic human right enhanced the informal economy in Zimbabwe?
- 4. Discuss how the legal basis of the right to work in the informal economy can be used to improve the outcomes of the informal economy workers in Zimbabwe



Module 3/Unit 2: The Constitution of Zimbabwe



(a) Pillar of rights for the informal economy

The protection of workers in the informal economy can be found through innovative and a wider interpretation of the rights provided in the Constitution. The Constitution provides enforceable rights under the Declaration of Rights in Chapter 4 as well as national objectives set out in Chapter 2. Section 44 of the Constitution imposes an obligation to respect, protect, promote and fulfil human rights on every person including juristic persons and every institution and agency of government. The duty to respect human rights is not just on the government but on everyone.

In Zimbabwe Homeless People's Federation and others v Minister of Local Government and National Housing and others SC 94/2020, the Supreme Court found that the national objectives under Chapter 2 merely prescribe national aspirations which are not enforceable as rights. The State is only obliged to provide for the progressive realisation of the national objectives, qualified by the availability of resources. The State must put in place policies and measures to ensure the progressive realisation of the national objectives. However, national objectives are a crucial yardstick upon which the state can be held accountable in terms of compliance with its human rights obligations towards the citizens. By including the national objectives in the Constitution, the framers intended to create standards by which the success or failure of the state and all its functionaries could be judged.

It is also important to bear in mind that even in relation to prescribed rights under Chapter 2, "fundamental rights are not illimitable." Rights may be limited under the limitation clause of the Constitution, s 86. In terms of this rights can be limited by a law of general application, but provided the limitation is fair, reasonable, necessary, and justifiable in an open and democratic society based on openness, justice, human dignity, equality and freedom.

In this chapter we highlight some of the most important substantive rights and national objectives concerning the right to work in the informal economy.



(b) Economic, property and development rights

(i) Right to life - s48

Section 48 provides that every person has the right to life. Although the section does not expressly stipulate that this right includes the right to livelihood and work, the broad interpretation that has been given to the right to life in other countries like India as in the Olga Tellis case shows that the right to life is interdependent with and inseparable from the right to work. No similar decision is yet to be handed down by the Constitutional Court in Zimbabwe. However, it is likely that the decisions of the courts in other countries are likely to have persuasive authority to the courts in Zimbabwe. Should the court take this wide interpretation of the right to life, it would protect informal economy workers from deprivation, or confiscation of their goods and destruction of their informal workplaces as such would be interpreted as a violation of the right to life. This is therefore an important area of impact litigation by informal economy workers and organizations like ZCIEA.

(ii) Property rights - s71

Section 71 (2) provides rights to property. It provides that "every person has the right, in any part of Zimbabwe, to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of all forms of property, either individually or in association with others." The section protects everyone from unlawful deprivation of their property. Section 71 defines 'property' as property of any description and any right or interest in property. The State has an obligation to protect the right to property meaning that the goods and commodities owned by people within the informal economy are also protected and cannot be taken away unless in terms of the law. However, in practice informal economy workers do not enjoy secure property rights as it is often seen police and municipality police always conduct random raids destroying tuck shops and taking commodities never to return them.

(iii) Freedom from arbitrary eviction - s74

Section 74 protects every person from arbitrary eviction from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances.

In Zuze v Trustees of Mlambo & Anor SC 69-19, at p. 14 the court elaborated the essential elements of this right. It stated that the "... essential elements of the protection afforded by s 74 are twofold. The first is that no person may be evicted from his home or have his home demolished 'without an order of court". This is a basic procedural requirement to ensure that the law is followed in conformity with due process.



(iv) Work and labour relations national objective - s 24

The section imposes a national objective on the State and all institutions and agencies of the government to adopt reasonable policies and measures within the limits of the resources available to them to provide **everyone** with an opportunity to work in **a freely chosen activity** in order to secure a decent living for them and their families. Further the State and all its institutions must endeavour to secure -



- Full employment
- The removal of restrictions that unnecessarily inhibit or prevent people from working and otherwise engaging in gainful economic activities.
- The implementation of measures such as family care that enable women to enjoy a real opportunity to work.

The provision of such a national objective is meant for everyone whether in formal work or in the informal economy to freely work and for the removal of restrictions on the right to work, especially in the informal economy. This provides a basis for advocacy work for the removal of restrictions on the right to work in the informal economy, in particular at local authority level and the adoption of policies and laws that advance the right to work.

(v) Freedom of profession, trade or occupation - s 64

This section provides that every person has the right to choose and carry on any profession, trade, or occupation, but the practice of a profession, trade or occupation may be regulated by law. This section applies to every person and is therefore enjoyable by workers and entrepreneurs in the informal economy.

(vi) Labour rights - s65

Section 65 (1) provides that - "Every person has the right to fair and safe labour practices and standards and to be paid a fair and reasonable wage." The phrase 'every person' means these rights apply to everyone and should also apply to informal economy employees and employers as long as there is an established employer-employee relationship.

The section provides several other labour rights to employees including the right of every person to form, join and participate in trade unions and employee or employers' organisations, to participate in collective job action, to collective bargaining and organize, to just, equitable and satisfactory conditions of work. Women and men have a right to equal remuneration for similar work. Women employees have a right to fully paid maternity leave for a period of at least three months.

Just like formal economy workers, workers in the informal economy are constitutionally protected from arbitrary labour practices and conditions.

(vii) Empowerment and employment creation national objective - s 14

This section provides for a national objective that the State and all institutions of government at every level must endeavour to facilitate and take adequate measures to empower, through appropriate, transparent, fair and just affirmative action, all marginalized persons, groups and communities in Zimbabwe including employment especially women and youths.

It follows that whenever matters concerning informal economy workers are before the court, the court should handle them taking into account the need to empower and that of employment for the citizens especially women and the youth. Equally the provision empowers workers and organisations in the informal economy to demand affirmative action measures such as quotas in tenders and services by the government and local authorities.



(c) Political and Civil Rights relevant to the right to work



(i) Right to human dignity and Freedom from torture or cruel, inhuman and degrading treatment or punishment - s 51 and s 53

Section 53 provides that no person may be subjected to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment. Section 51 provides that every person has "inherent dignity in their private and public life, and the right to have that dignity respected and protected."

It is common knowledge that informal economy employees are often subjected to inhuman and degrading treatment that violates inherent human dignity through excessive, arbitrary force by the police, municipal police and officers. These sections provide the legal basis for challenging such actions.

(ii) Right to personal security - s 52

The section provides every person the right to bodily and psychological integrity. Everyone including informal economy workers is protected from police brutality in whatever circumstances. Whatever action local authorities take against informal economy workers should be done in cognizance of their integrity as persons.

(iii) Right to equality and non-discrimination - s 56

Section 56 provides that all persons are equal before the law and have the right to equal protection and benefit of the law. Subsection 2 of the same provides that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural, and social spheres.

Every person has the right not to be treated in an unfairly discriminatory manner on grounds that include "nationality, class, sex, gender, marital status, pregnancy, disability or economic or social status..." Many by-laws, measures that prohibit trading or business on public areas and pavements have disproportionate effect on poor people, women who dominate in the informal economy and may be challenged as unfair discrimination on the basis of class and economic and social status.



Equally s 56 (6) places an obligation on the State to take reasonable I measures to promote equality and protect or advance people or classes of people who have been disadvantaged by unfair discrimination. This may include women as well as informal economy workers who historically have suffered undue discrimination, rights from the colonial times.

(d) Other general rights and national objectives

(i) Rights of women and gender balance - s 80, 17

Section 80 (1) provides every woman full and equal dignity of the person with men including equal opportunities in political, economic, and social activities.

Section 17 (1) provides a national objective that the State and all institutions and agencies of government at every level must take practical measures to ensure that women have access to resources, including land, on the basis of equality with men. Again, when it comes to matters of informal economy workers, it is important to note that the bulk of such workers are women. Due regard should be given in such cases to ensure that women also have equal access to resources as men including access to resources, land, and trading spaces.

(ii) Youths empowerment - s 20

Section 20 imposes a national objective on the State and all institutions and agencies of government at every level to take reasonable measures, including affirmative action programmes, to ensure that youths have opportunities to associate and to be represented and participate in political, social, economic, and other spheres of life and that they are afforded opportunities for employment and other avenues to economic empowerment.

(iii) Rights of children - s 81

Protects the rights of every boy and girl under the age of eighteen years particularly the right to be protected from economic and sexual exploitation, from child labour, and from maltreatment, neglect, or any form of abuse.

Group Activities for Module 3/Unit 2

Please answer the following questions in your groups

- 1. Discuss some of the provisions of the Constitution of Zimbabwe (2013) that are more specific to the informal economy.
- 2. Which pillars of the Constitution of Zimbabwe (2013) do you consider as very instrumental in advancing the rights of informal economy workers in Zimbabwe?
- 3. Discuss how the Constitution of Zimbabwe (2013) has promoted the rights of informal economy workers in Zimbabwe.
- 4. Discuss how the informal economy workers in Zimbabwe can benefit more from the Constitution of Zimbabwe (2013).

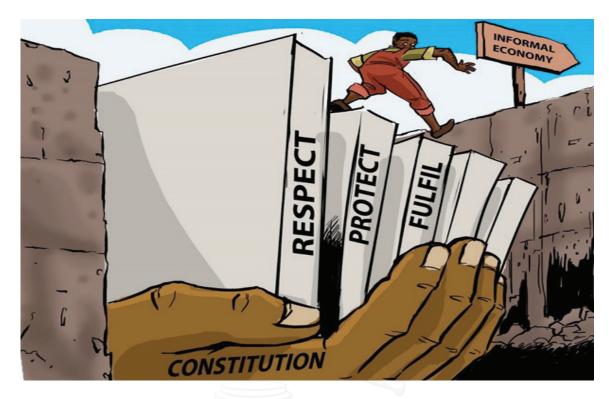






Module 3/Unit 3:

Policy Regulatory Framework on the Informal Economy in Zimbabwe



Besides the legal and constitutional framework on the right to decent work for workers and entrepreneurs, the area of the policy regulatory framework is important in realising the right to work in the informal economy and for the transition to formality.

At an international level, the Transition from the Informal Economy to the Formal Economy Resolution of 2015 (No. R204) provides a broad international framework to guide policy making in relation to the transition from informality to formality. The summary below shows that the current policy framework in Zimbabwe has fully embraced the need to transition to formality for the informal economy. ²⁰

(a) Vision 2030

The overarching economic development vision of the post Mugabe Government, the so-called Second Republic is encapsulated in its Vision 2030 Agenda. This was launched in September 2018, with the overall aspiration to transform the local economy into an upper middle-income economy by 2030. Part of the values and objectives to attain the vision include inclusive socio-economic development programs under the mantra "leaving no-one behind." This includes coming up with a blue-print, alternative policy, and legislative frameworks to highlight the economic impact and importance of the informal sector in the Zimbabwean economy. To come up with effective means to ensure that the informal sector can contribute to the growth and development of the national economy.

Vision 2030 envisages creation of an enabling environment to support Micro, Small and Medium Enterprises so that these contribute meaningfully towards economic growth, value addition, exports, and decent employment creation. In addition, skills development and provision of funding will be key for Micro, Small and Medium Enterprises start-up and businesses run by previously disadvantaged groups.

Derived from Kanyenze G et al (2017), op cite.



Vision 2030 mainstreaming of cross-cutting themes covers support towards Micro, Small and Medium Enterprises, Youth Development, Gender Equality and Women Empowerment.

(b) Agenda 2030 for Sustainable Development

The Vision 2030 Agenda is inspired by the Agenda 2030 for Sustainable Development, also referred to as the Sustainable Development Goals (SDGs), which came into effect in January 2016 following the expiry phase of the Millennium Development Goals (MDGs) in 2015. The 17 SDGs were adopted by the United Nations in 2015 as a universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity. The 17 SDGs are integrated—they recognize that action in one area will affect outcomes in others, and that development must balance social, economic, and environmental sustainability.

Countries have committed to prioritize progress for those who are furthest behind. According to the SDGs Framework, each government sets its national targets taking into account national circumstances. As a result, the Zimbabwean government developed the Zimbabwe Position Paper on Sustainable Development Goals (SDGs) which prioritises ten (10) SDGs. These include Goal 2 - End hunger, achieve food security and improved nutrition, and promote sustainable agriculture; Goal 3 - Ensure healthy lives and promote well-being for all at all ages; Goal 4 Ensure inclusive and equitable quality education and promote life-long learning opportunities for all; Goal 5 Achieve gender equality and empower all women and girls; Goal 8 Promote sustained, inclusive and sustainable economic growth, full and productive employment; and Goal 9 Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation.

The above SDGs are important for the informal economy. For instance, SDG 8 expresses its concerns about decent working conditions, employment creation, social protection, right at work, and social dialogue. One of the targets of this goal is to "protect labour rights and promote a safe and secure working environment for all workers, including migrant workers, in particular women migrants, and those in precarious employment" - all of which are of significant importance to workers in the informal economy.

The government has also shown its commitment to SDGs by institutionalising multi-stakeholder committees for consultation and implementation of the SDGs through the Ministry of Macroeconomic Planning and Investment Promotion.

(c) National Development Strategy 1

The National Development Strategy 1 (2021-2025) is the first of two five-year Medium Term Plans that will guide the Government and other stakeholders towards achieving the domestic goals set out in Vision 2030 as well as the global aspirations of the SDGs.

NDS-1 calls for bold and transformative measures to ensure inclusive and sustainable growth. Among such measures outlined under NDS1 is the need to facilitate the transition from the informal to the formal economy in order amongst others to raise productivity, increase the tax base and regularize employment including removing the most pervasive decent work deficits in the informal economy.

A key priority under NDS-1 is that of formalization of the SMEs. Identified programmes include formalization of the informal economy, rural development, and policy and regulatory framework review. And critically NDS-1 provides "...Government will prioritize development and implementation of a national action plan to facilitate the transition from informality to formality by the SMEs sector," (paragraph 268). To that end April 2022 the Government launched a road map for the development of a Comprehensive National Strategy and Implementation Plan to Facilitate the Transition from Informal to the Formal Economy in Zimbabwe.



(d) National MSME Policy (2020 – 2024)

The National MSME Policy recognizes the important role played by MSMEs in the national economy. It is based on 12 Strategic pillars to support the development of MSMEs including an enabling Legal and Regulatory Environment.

The central theme in the MSME Policy document is that of - "promoting the formalisation and capacitation of MSMEs for productivity, competitiveness and employment" and the need to continuously enhance the business regulatory environment for MSMEs.

(e) Zimbabwe National Industrial Development Policy (2019-23)

The Policy aims to facilitate the sustainable growth of industry and transformation of industry. It recognizes the need to focus on MSMEs as major potential generators of productive employment and reduce poverty, especially with regards to women and youths.

(f) Zimbabwe National Employment Policy Framework (ZiNEPF) (2009)

The overall objective of ZiNEPF is to "...to promote and secure sustainable, full, productive and freely chosen decent employment for all under conditions of freedom, equity, security and human dignity."

The Policy aims to mainstream employment as a cross-cutting issue targeting both the formal and informal sectors to achieve the overall objective of full, productive employment.

(g) Zimbabwe National Gender Policy (2013-2017)

The vision of the National Gender Policy (NGP) "is to have a society in Zimbabwe where there is economic, political, religious and social equality and equity among women and men in all spheres of life at all levels."

The NGP is in fulfilment of the gender equality provisions of the Constitution as well as the international and regional conventions, protocols and declarations on gender equality and equity that Zimbabwe has recognized and adapted. These include, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW,), Convention on Civil and Political Rights (CCPR, the Equal Remuneration Convention, Convention on the Elimination of the Worst Forms of Child Labour, Convention on Economic, Social and Cultural Rights (ECOSOC) and the SADC Declaration on Gender and Development.

The Policy is based on certain underlying Principles, including the following:

- A recognition that issues of development, human development in particular, are concerned with equity, equality, participation, association, social justice and human rights.
- Gender discrimination is a serious impediment to development that affects the whole country and thus needs to be eliminated through appropriate individual and collective strategies.
- A participatory approach that entails broad consultation and involvement of both women and men in all spheres of development guarantees success of the transformation of society to promote democracy, equality and equity between women and men.
- All Government policies must acknowledge women and men as equal and important human resources for development. This equality and equity of women and men is anchored on the protection of the rights of the individual.
- All Government policies, the private sector, parastatals, non- governmental organisations, traditional structures and practices must recognize that women and men are guaranteed equality before the law and protected from discrimination through the Constitution.



• There is a need to promote and support equal and equitable access, control and ownership of resources, information, opportunities and decision-making positions for women and men. In this regard it is imperative to address the imbalances with respect to women's access, control and ownership of resources and decision –making positions.

(h) Policies of local authorities

A radical milestone development has been the City of Harare Small and Medium Enterprises Policy launched in June 2023. The Policy was done with the active participation of associations of the informal economy and residents associations, including ZCIEA.

The Policy has incorporated the developmental and inclusive approach that underlies the Constitution. It calls for the development of the SMEs sector towards transition to formality. It provides for the recognition of associations of the informal economy and their involvement in the planning and development of the SMEs sector in Harare. It provides for an inclusive approach that emphasises on the role of women, youths and persons living with disabilities. It provides for the development of social protection schemes for the informal economy in conjunction with the National Social Security Authority (NSS). It provides for the establishment of a Revolving Fund for funding of SME developments.

(i) International policy frameworks

At its 104th session in June 22015, the International Labour Conference (ILC) adopted the Recommendation concerning the transition from the informal to the formal economy (Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) based on strong tripartite consensus and near unanimous vote. It has been stated that the Recommendation is of strategic significance for the world of work and for the future of work including for the informal economy because: ²¹

- "It concerns half of the global labour force and more than 90 percent of small and medium enterprises worldwide who are working and operating in conditions of informality.
- It is the first international labour standard to focus on the informal economy in its entirety and diversity and to point clearly in the direction of transition to the formal economy as the means for realizing decent work for all and for achieving inclusive development.
- It is of universal relevance, acknowledges the broad diversity of situations of informality including specific national contexts and priorities for the transition to the formal economy and provides practical guidance to address these priorities."

Recommendation No. 204 is built on the shared understanding and shared experience of the ILO and in particular that it is only through an integrated strategy, a policy mix and institutional coordination that the transition to formality of the informal economy can be achieved. Such transition must seek to achieve three main goals, namely:

- facilitate the transition of workers and economic units from the informal to the formal economy, while respecting workers' fundamental rights and ensuring opportunities for income security, livelihoods, and entrepreneurship,
- promote the creation, preservation and sustainability of enterprises and decent jobs in the formal
 economy and the coherence of macroeconomic, employment, social protection and other social
 policies; and
- prevent the informalization of formal economy jobs.



Group Activities for Module 3/Unit 3

In your existing groups, please answer the questions that follow:

- 1. Identify two provisions from the Transition from the Informal to the Formal Economy Recommendation, (No. 204) and one provision from the Violence and Harassment Convention (190): (i) Which provision realises the right to work for workers in the informal sector as set out in article 23 (3) of the Universal Declaration of Human Rights (1948)?
 - (i) Which provision realises the right to work for workers in the informal sector as set out in article 23 (3) of the Universal Declaration of Human Rights (1948)?
 - (ii) Which provision may be adopted as special measures to ensure the right to work under section 24 (2) of the Constitution, in particular for women and youths.

2. Analyse the song "Copyrights" by Winky D and:

- (i) Summarise the musician's position on the condition of workers in the informal sector. What causes this and how can it be remedied?
- (ii) Provide two other songs of your choice, one from Zimbabwe and the other from any other country in Africa, that speak to the right to work and plight of workers in the informal sector.
- (iii) You have been asked to choose one of the above three songs as the ZCIEA anthem for the year to be used in all meetings, events, and demonstrations. Which one would you choose and why?







MODULE 4:

LEGAL REGULATORY FRAMEWORK ON ORGANIZATION AND OPERATIONS OF THE INFORMAL ECONOMY

This Module has three units

- 1. Legal framework on types of organisations in the informal economy
- 2. Legal framework on the operating environment of informal economy businesses
- 3. Licensing and selected areas on operations of the informal economy



Module 4/Unit 1:

Legal framework on types of organizations in the informal economy

(a) General legal framework

This Unit focuses on the legal regulatory framework concerning forms of business organization and legal standing. The objective of the Unit is to provide a picture of the operations of entrepreneurs and workers in the informal economy, the extent of realization of the right to work and the capacity for businesses to transition from informality to formality.

In assessing the legal and regulatory framework of the informal economy it is crucial to keep in mind that the informal economy is not homogenous. It is marked by considerable diversity and heterogeneity. This includes different levels of informality, scale and size, sector and demography between men and women.



Similarly, the diversity of players in the informal economy has immense implications in the assessment of the legal regulatory framework and its effect on the different players in relation to needs, vulnerabilities and opportunities.

(i) Forms of business organization, legal standing and property-economic rights

There are many and diverse forms of businesses in the informal economy in Zimbabwe, depending on the degree of formality, status, and size. They range from individual natural persons operating as entrepreneurs or own account workers, to simple unincorporated associations, clubs, and partnerships to incorporated associations and co-operatives. The most sophisticated but rare forms being registered companies and private business entities.

The forms of organisation of the business have several implications on economic units and workers in the informal economy including legal standing, taxation, protection from harassment by authorities, enjoyment of economic, social, and labour rights and access to opportunities for growth and transition to the formal economy. The legal regulatory framework is a key aspect of attaining the right to work set out in the Constitution and to facilitating the realisation of the objectives set out in various national policies like the NDS-1 and Vision 2030 and ILO instruments. These include the promotion of entrepreneurship, development of micro, small and medium - sized enterprises and their transition to the formal economy as a means of attaining sustainable development, poverty eradication and inclusive growth and generation of decent, productive, and freely chosen employment.

The different forms of business organisation including the legal essentials and recommendations for reform are discussed below.

(ii) Own-account entrepreneurs operating as individuals



Source:ZCIEA

The most dominant form of business organization in the informal economy are individual persons running unincorporated businesses, usually micro and small businesses, including own-account workers and home- workers. Major business activity includes informal traders, vendors, transport operators and cottage industries.



The 2012 MSMEs survey revealed that of the business owners surveyed, 71% were individual entrepreneurs with no employees and 24% were micro businesses employing 1 to 5 employees. In terms of formality, 85% were not registered or licensed, and of the 15% who were registered or licensed, 71% were licensed with a local authority or council.

Under the law, every adult individual has the right to property subject to some restrictions. Section 71 (2) of the Constitution provides rights to property. It provides that "every person has the right, in any part of Zimbabwe, to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of all forms of property, either individually or in association with others." Section 71 defines "property" broadly as property of any description and any right or interest in property.

Every person enjoys the right to protection from unlawful deprivation of property under section 71 of the Constitution. The State has an obligation to protect the right to property. This means that the goods and commodities owned by people within the informal economy are also protected and cannot be taken away other than in terms of the law.

The meaning of the term "person" is broad. It includes natural persons, that is human beings and juristic persons like associations, cooperatives, and companies - s 2 of the Constitution.

Laws providing right to run individual business

The right of individuals to operate businesses is equally recognised in various statutes:

- Under the Small and Medium Enterprises Act [Chapter 24:12]. The definition of a microenterprise, small enterprise or medium enterprise includes a business which is managed by one person or jointly by two or more persons whether corporate or unincorporated.
- Under the Income Tax Act [Chapter 23:06] an "Informal trader" is defined as an individual who
 carries on a trade for his/her own account from which she/he derives a gross income of less than
 six thousand United States dollars and includes a hawker, or street vendor, or a person selling
 goods at a peoples market or flea market or a person who manufactures articles in or from
 residential premises.
- ILO R204 defines "economic units" in the informal economy as including units that are owned by individuals working on their own account, either alone or with the help of contributing family workers, (Art. 3).
- The Home Worker Convention, 1996 (C177) defines the term home worker to include 'Own account workers' who are self-employed and buy their own raw materials and are generally in direct contact with the market.

However, there are certain legal requirements and restrictions pertaining to unincorporated individual-run businesses. Some of the major ones pertain to legal capacity and legal personality. The requirement of lawfulness applies to all businesses, including in the informal economy.

Legal capacity

The individual entrepreneur must have the requisite legal capacity. Generally, every adult person, who is everyone who is or above eighteen years of age has legal personality. ²² That is they enjoy full capacity to enter into contracts in their own right with whomever they wish, without being subjected to any unlawful discrimination. This includes for women and men - s 56 (2) of the Constitution. Previously and under common law women had suffered legal minority status being under the marital power of their husbands.

²² In terms of s 15 of the General Law Amendment Act [Chapter 8:07], which replaced the Legal Age of Majority Act, No. 15 of 1982.



However, certain persons have restricted capacity. These include minors, children, foreigners, insolvents, mental patients, and persons whose capacity is specifically restricted by statute.

Lack of separate legal personality

An unincorporated individual business enterprise lacks a separate legal personality. It is not a body corporate. That means it is indistinguishable from the owner. There are several disadvantages that arise from this:

- It cannot sue or be sued in its own right.
- the individual owner is personally liable for the debts, liabilities, and obligations of the business. Thus, if the business fails or falls into serious debt, the personal property of the owner may be attached and sold to off-set the debt.
- It is not capable of perpetual succession. In other words, the business potentially comes to an end with the death of the owner or his/her legal incapacitation from any of the occurrences discussed above that may affect legal capacity.

Lawfulness

Every business or its objects must be lawful. It must not be against statutes, public policy or morality. This was reiterated in the Gambiza case:

Gambiza v Taziva 2008 (2) ZLR 107 (H)

It is trite that there must be no illegality in a contract. An agreement is illegal if the making of the agreement, the performance agreed upon, or the ultimate purpose of both parties in contracting is prohibited by common or statute law, that is, if its contrary to public policy or is contra bonos mores." [the last phrase means against public morality].

The requirement of lawfulness applies to all businesses, formal and informal. This point is reiterated in R204. Article 2 (b) states that the term informal economy "does not cover illicit activities, in particular the provision of services or the production, sale, possession or use of goods forbidden by law, including the illicit production and trafficking of drugs, the illicit manufacturing of and trafficking in firearms, trafficking in persons, and money laundering, as defined in the relevant international treaties."

Conclusions

The above discussion shows that whilst the form of individual, unincorporated business units are lawful and provide a flexible and cheap way of constituting a business and indeed constitutes the overwhelming majority of economic units in the informal economy, this form also has serious disadvantages. Such economic units suffer the worst effects of informality.

The lack of separate legal personality makes it difficult for such units to access credit and loans from financial institutions. There are problems of succession or operation on the death or incapacitation of the owner and the owner's personal or family property is at risk of attachment should the business fail. Additionally, are problems of lack of growth or sustainability due to absence of economies of scale or aggregation with others.



(b) Voluntary association and solidarity economic units

A popular form of business organization in the informal economy are various types of unincorporated collective voluntary associations.

An association is unincorporated if it does not have a separate legal persona from its members. Incorporation may be under the common law or general law.

Voluntary associations may take various forms. Common examples include internal savings and lending schemes (mukando) where associates pool funds to buy goods and materials. The High Court Rules define the term "association" as follows:



Definition of "Association", High Court Rules, 2021 r 11

"association" means any unincorporated body of persons, and includes a partnership, a syndicate, a club or any other association of persons.

Voluntary associations are also recognised under various laws and conventions:

- Under R204 the term informal economy includes units owned by individuals working with the help of family workers, co-operatives, and social and solidarity economy units. (art. 3). The latter may include clubs, syndicates, or associations of individuals or groups of entrepreneurs or internal savings and lending schemes (mukando).
- Under the Promotion of Co-operatives Recommendation, 2002 (No. 193) a co-operative is defined as "an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise." (art. 2).
- Under the Small and Medium Enterprises Act a "co-operative" includes "(c) any other association of persons which has as its object the promotion of the economic interests of its members in accordance with co-operative principles..." (s 2).

Unincorporated collective voluntary associations play an important role in the informal economy. They are easy, flexible, and cheap to form and run without many requirements of formality or registration. They help offset the deficits of lack of economies of scale that affect individual own-account workers, help spread business risk and provide informal collective social protection mechanisms. Hence, they are a popular form of business organization in the informal economy.

However, incorporated associations suffer several deficits and disadvantages, broadly similar to those that affect unincorporated individual run businesses. The major deficit being lack of a separate legal personality which makes the association indistinguishable from its associates or members.

Under the common law, an unincorporated association, not being a legal persona, cannot as a general rule acquire rights and obligations in its own name or sue or be sued in its name apart from the individual members, whose names have to be cited in the summons.



It is not a universitas or body corporate. Thus, in several cases it was held that a workers committee cannot institute legal action in its own name for unfair labour practices against an employer as it is not a legal persona. See CT Bolts (Pvt) Ltd v Workers' Committee SC 16-12; and Zimbabwe Bata Shoe Company Limited v Bata Shoe Company Middle Management SC 30-12.

However, whilst as a general rule it cannot sue in its own name without the names, there are exceptions. Under s 11 of the High Court Rules, S.I. 202 of 2021, an association may be sued together with its members or associates. And where found liable, execution in respect of a judgment against an association shall first be levied against the assets of the association and, after such execution, against the private assets of any person held to be or held to be estopped from denying his or her status, as an associate, as if judgment had been entered against him or her. Legal liability remains where the association was dissolved after legal proceedings had commenced.

The above therefore creates a major challenge to transition to the formal economy for this form of business organisation despite its considerable importance.

(c) Incorporated voluntary associations

At common law, a voluntary association may acquire legal persona if it fulfils the common law requirements for incorporation as a universitas. A universitas is an organisation that has a common-law persona but is not registered or regulated by any enacted laws.

A universitas is incorporated when a contract is concluded between its members showing that the members have a serious intention to associate to achieve a common objective for the benefit of the associates and are in agreement on the essential characteristics and objectives of the universitas. When determining whether an association of persons may be regarded as a universitas one should consider, the nature, constitution, objects, and activities of an association of persons. Generally, it is established that a body that has no constitution is not a universitas for it is the constitution that shows the nature, objects, and regulations of the association. A partnership may have a deed of partnership done by a lawyer called a notary public and registered with the Registrar of Deeds to attain such status.

A universitas – once incorporated – is distinguished from an association of individuals as it is an entity, legally disjointed from the members forming it; and it has the capacity, apart from its members, to acquire rights and property and to incur obligations on its own. Thus, the main characteristics of a universitas are that it should be capable of owning property apart from its members and it should be capable of perpetual succession.

Incorporated common law associations may take different forms including clubs, syndicates, partnerships, confederations, and co-operatives. Their main advantage is that they are relatively easy to form without the need of the red tape and bureaucracy that accompanies registration and management of companies. Other advantages are that members do not have personal liability for the obligations of the association and that the association has perpetual succession from the members who constitute it. This makes it easier for such associations to access credit with financial institutions or enter into formal arrangements with regulatory authorities such as local authorities or licensing departments. A good example is the association of commuter omnibus operators in Bulawayo. Individual commuter taxi owners register with an association which is then provided with specific routes, ranks as well as rights and duties by the local authority. The Government is now seeking to extend this model nationwide with draft regulations in place.

For a sample or precedent of a constitution of a simple incorporated voluntary association.



(i) Co-operatives

A major organizational form in the informal economy and one that may greatly facilitate the transition from informality to formality of the informal economy are co-operatives.

Two complementary definitions of the term cooperative are found in domestic law and international law, namely:



DEFINITIONS OF A CO-OPERATIVE	
Small and Medium Enterprises Act, s 2	Promotion of Cooperatives Recommendation, art. 2
An "association of persons which has as its object the promotion of the economic interests of its members in accordance with co-operative principles…"	An "autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise."



Source:ZCIEA



It has been noted that "cooperatives are playing an increasingly important role worldwide in facilitating job creation, economic growth and social development" and employ an estimated 100 million women and men and have more than 800 million individual members. ²³

R193 of 2002 calls on Governments to adopt a supportive policy and legal framework for the promotion and strengthening of cooperatives, as part of constructing balanced societies. This includes establishing "an institutional framework with the purpose of allowing for the registration of cooperatives in as rapid, simple, affordable and efficient a manner as possible" - Article 6 (a).

To that end, a major policy objective of the state in Zimbabwe is to encourage the formation of cooperative societies in all sectors of the economy and to promote their efficiency - s 3, Cooperative Society Act [Chapter 24:05]. For that reason, we will give enhanced coverage of this organisational form.

Cooperatives are a form of a voluntary association with certain specific features in particular adherence to what are termed "cooperative principles."

Fundamental Cooperative Principles

- voluntary and open membership
- democratic member control
- member economic participation
- autonomy and independence
- training and information of members
- cooperation among cooperatives
- concern for the community.



Source:C. Hodzi in K Bond-Stewart, 1986

²³ M Levin, ILO Recommendation No. 193 on the Promotion of Co-operatives.



Co-operatives may take different forms, distinguished by the degrees of formality. On the one hand are cooperatives which are unincorporated associations and others which qualify as the common law universitas. At the highest level of formality are registered co-operative societies and co-operative companies.

The diversity of forms of co-operatives is well captured in the definition of the term co-operative in s 2 of Small and Medium Enterprises Act. This reads:

Co-operative definition – SME Act, s 2

"co-operative" means-

- (a) a co-operative company registered in terms of the Companies Act [Chapter 24:03]; or
- (b) a co-operative society registered in terms of the Co-operative Societies Act [Chapter 24:05]; or
- (c) any other association of persons which has as its object the promotion of the economic interests of its members in accordance with co-operative principles.

Despite the prevalence of cooperatives, only a small number of them are formally registered as shown by the following diagram from the 2012 MSMEs Survey:

Hence the 2012 MSMEs survey revealed that of the MSMEs surveyed, 15% were registered/licensed and of these, only 6% were registered with the Registrar of Cooperatives. Whereas 17% were registered as companies.

A media report in 2022 spoke of a total of 1 871 cooperatives registered and 74 100 co-operators trained since the advent of the Second Republic in November 2017. ²⁴

A major reason for these low levels of registration may be the barriers and rigidities in the framework established under the Co-operative Societies Act which fail to live up to the standard set in R193 of an institutional framework which is "rapid, simple, affordable and efficient."

Formation of co-operatives

The Cooperative Societies Act ["CSA"] provides for the formation, registration, regulation, management, functioning and dissolution of registered co-operative societies.

The CSA provides that any society the object of which is the promotion of the economic interests of its members in accordance with co-operative principles may apply to register as a primary society, or a secondary society or an apex organisation - s11.

The "cooperative principles" are set out in s 7 of the CSA. These are essentially adopted from the set of principles by the international cooperative movement and codified in Article 3 of R193.

²⁴ The Herald 25 August 2022, E Ziwira and F Chakawa,



- **Primary society:** This is the first and basic co-operative under the CSA. This is a cooperative comprised of at least ten natural persons who meet the qualifications set out in sections 3 and 38:
 - attained the age of eighteen years or has become a major by operation of law.
 - is a citizen of, or is ordinarily resident in, Zimbabwe; and,
 - has satisfied such other requirements with regard to residence, employment, profession, or other matters as may be prescribed in the by-laws of the society.
- **Collective society.** This refers to a society all of whose members work for the society; and in which the means of production are jointly owned by its members.
- **Secondary society.** This is a cooperative society made up of at least five primary societies registered in the same economic sector.
- **Apex organization.** This is an organization of at least twenty-five primary societies, or two secondary societies; registered in the same economic sector.

The Registrar of Cooperatives may allow registration on lesser numbers than the above where she /he is satisfied that there are compelling reasons for a society to be registered and that its registration will be in the interest of its members - s 13.

Application for registration is made in a prescribed form to the Registrar of Cooperatives signed by at least ten of the intended members accompanied by the proposed by-laws of the co-operative, a feasibility study, viability assessment of the society and payment of a prescribed application fee.

The by-laws must meet the requirements set out in the Schedule including identification and name of the cooperative, objects, scope and area of operation, membership, rights of worker-co-operators, governance and meetings and the property and funds of the society.

Certain requirements and formalities apply to the name of the society, as set out in s 13:

- No society shall be registered by a name which in the opinion of the Registrar is likely to mislead
 the public or to cause offence to any person or class of persons or is suggestive of blasphemy or
 indecency or which he considers to be undesirable for any other reason. Thus, the Registrar may
 reject a proposed name if it is already the name of another registered cooperative or company.
- The word "co-operative" shall form part of the name of every registered society.
- The word "limited" shall be the last word in the name of every registered society.

If satisfied that the applicant meets the requirements the Registrar may issue a certificate of registration and insert the cooperative in the Register of Cooperatives. Alternatively, the Register may issue a certificate of provisional registration to allow the cooperative to meet any cited deficiencies whilst operating for up to two years. A party aggrieved by a decision of the Register may appeal to the Minister and beyond that to the Administrative Court.

Advantages of registering a co-operative

Registration confers major benefits to a cooperative. They include the following:

▶ Registered societies to be bodies corporate. Section 21 provides that that every registered society "shall on registration be a body corporate with perpetual succession and, in the name under which it is registered, be capable of holding property, entering into contracts, of suing or being sued and, subject to this Act, of performing all other acts that bodies corporate may by law perform."



- ▶ Limited liability of members. Section 22 provides that Subject to this Act, the present or past members of a registered society shall not by reason of their membership be liable for the debts or obligations of the society beyond the amount, if any, unpaid on the shares held by them."
- ▶ There are several other additional benefits conferred by the Act which include the following:
 - Subject to a few limited exceptions, the shares of a member of a registered society shall not be liable to attachment or sale under any order of a court in respect of any debt or liability incurred by such member- s 77.
 - There is enhanced protection of the property and assets of the cooperative in that these, other than trading stock and goods produced for sale by the cooperative, cannot be sold, donated, or otherwise disposed of without the prior approval of the Registrar- s 80.
 - Transparency and checks and balances are promoted by the requirement of annual general meetings of members to confirm financial statements, receive audited reports, consider use and distribution of net surpluses, elect management committee officers.
 - In terms of social security, a registered society may establish a contributory pension or provident fund for the benefit of its members and employees subject to the provisions of the Pension and Provident Funds Act [Chapter 24:09]

Disadvantages that may arise from being registered

There are some disadvantages that may arise from being a registered entity. These mainly relate to restrictions or barriers in relation to autonomy, internal management and functioning, levies, and dissolution. These include:

- Reduction of internal autonomy with greater state intervention in the affairs of the cooperative.
 There is a requirement to provide annual reports of operations and audited financial statements to the Register.
- Registered cooperatives are liable to inspections, inquiries, and audits by the Registrar in relation to their constitution compliance, administration, management, or finances. An adverse outcome may eventually lead to winding down of the society s 112.
- Lack of full control on the dispute resolution mechanism. Certain disputes like those concerning
 interpretation of the by-laws have to be referred to the Registrar for resolution by herself/himself
 or arbitration or the Minister.
- Restrictions on areas of investment without the approval of the Registrar other than in the specified areas. Under s 84 a registered society may invest or deposit its funds in (a) in the Post Office Savings Bank; (b) with any bank registered under the Banking Act [Chapter 24:01]; (c)in the same manner as the moneys in the Guardian's Fund may be invested in terms of section 106 of the Administration of Estates Act [Chapter 6:01]; (d) in the shares of any other society; and (e) in such manner as may be approved in writing by the Registrar.
- Establishment and restrictions of Reserve Funds. Every registered society shall establish and maintain a reserve fund which shall be used in the manner prescribed in the society's by-laws and to which the society shall allocate annually at least twenty per centum of the surplus raised from the society's operations during the financial year: Provided that, where the assets of the society exceeded its liabilities in the preceding financial year, the society may allocate a minimum of five per centum of its surplus to the reserve fund. The reserve fund of a registered society shall be indivisible, and no member shall be entitled to claim a specific portion of it s 85.



- Restrictions on distribution of net surplus and dividends payable. Under s 87, the remainder of the surplus resulting from the operations of a registered society during any financial year, after contributions have been made to the society's reserve fund and to the Central Cooperative Fund, may, subject to the Act and if the society's by-laws so provide, be divided by way of dividend or patronage bonus among the members of the society or by way of honoraria to members of the society, or allocated to any other fund constituted by the society. No registered society shall pay a dividend or issue paid-up share capital exceeding such maximum amount or rate as may be prescribed by the Minister. A registered society may distribute a part of its net surplus among its members in the form of bonus shares A registered society may, with the approval of at least two-thirds of the members present and voting at a general meeting, contribute an amount, not exceeding ten per centum of the current year's net surplus, to a charitable purpose.
- Restrictions on the transferability or disposal of shares of members only to the society or members thereof s 72.
- Liable to an annual levy of 5% of its surplus to the Central Cooperative Fund established under section 91 to provide nationally for research on and general development of the cooperative movement and providing audit facilities for cooperatives.
- Continued liability for debts after cessation of membership, for up to two years after cessation or death provided this shall cease if the first audit of accounts after cessation discloses a credit balance in favour of the society, in which case the liability shall cease forthwith.
- Criminal liability for breach of some provisions of the CSA and society by-laws such as hindering
 any inspection, inquiry by the Registrar. Such persons may be liable for a penalty of a fine or
 imprisonment or both.
- Dissolution of the society may only be in terms of a winding up order by the Registrar following an inquiry by the Registrar on her / his own initiative or application by the society after a vote of at least ¾ of members present and voting in special general meeting, or a creditor of the society or an inquiry by the Registrar on their own if satisfied that the society ceased to operate for at least one year or membership has fallen below the minimum membership requirements. An appeal lies to the Minister against a decision of the Registrar and thereafter to the Administrative Court. See s 101.

Reforms and Recommendations

Whilst the aim of the Act is to assist and facilitate the establishment and development of cooperatives the present framework for the registration of cooperatives is too cumbersome, complex, and based on a one size-fit all approach. The requirement of 10 members for formation of a cooperative may be too high considering that 71% of SMES work as individuals not employing any labour. The 5% levy to the Central Fund may be too onerous for small cooperatives, whilst the restrictions on thresholds of dividend payouts may act as a disincentive. The requirements of by-laws go well beyond the capacity of many persons in the informal economy. It would be better if simple cooperative model by-laws were in place developed by the Ministry and apex co-operatives and made annexures to the Act.

Both the Co-operatives Society Act and the Small and Medium Enterprises Act should incorporate regulations providing for Model By-Laws and Constitution of cooperatives societies and small and medium enterprises as is now done with Model Articles of Association for companies and private business entities under the 26th Schedule of the Companies and Business Entities Act [Chapter 24: 31].

The above constitute major barriers to the formalization of cooperatives. Hence whereas 17% of the formal SMESs surveyed in the 2012 survey were registered companies only 6% were registered cooperatives.



Yet this is the one organizational form of entrepreneurs and workers in the informal economy that could rapidly achieve the goal of transition of the informal economy to formality as well as effectively address many of the decent work deficits suffered in this industry pertaining to employment rights, social protection, gender, youths, and ethnic equity as well as social dialogue.

To achieve the standard of simplicity, rapidity, affordability, and efficiency set in R193 there is need to reduce and streamline the registration requirements and to differentiate co-operatives depending on their size, capital and turn-over as for instance done under the Income Tax Act in relation to the presumption tax for informal traders.

On the basis of such stratification and categorization to then provide different requirements and thresholds for registration, internal management, and functioning, reporting and audit requirements and on distribution of dividends and investment portfolios. The regulatory framework should allow a more accommodating and relaxed regime, taking into account the different thresholds, sizes, and capacities of co-operatives. But critically always guided by the overriding objective of ensuring an institutional and regulatory framework which is "rapid, simple, affordable and efficient" per R193.

(ii) Companies and other registered business entities

Under capitalism, the principal organisational form of businesses are corporate registered companies. Such entities are body corporates and legal persons in their own rights and have limited liability for the shareholders.

The principal law that governs companies is the Companies and other Business Entities Act [Chapter 24:31], (Hereinafter, "C&OBEA" or the "New Act") which came into force in the first quarter of 2020. The new Act repealed and substituted the Companies Act [Chapter 24:03] ("Old Act" or Act No.47 of 1951), which was 70 years old and lagged behind. It also repealed the Private Business Corporation Act [Chapter 24:11] and incorporated the provisions of the PBC into the New Act. The purpose was to encourage small businesses, including small family run businesses, to register as recognised business entities.

The C&OBEA provides for the constitution, incorporation, registration and administration of companies and other recognised business entities. The previous Act, which came into effect over 70 years ago in 1952, lagged behind Constitutional, technological, economical, and other developments that have taken place in Zimbabwe over the years.

Types of companies and business entities

The Act provides for the registration and regulation of companies and business entities. A business entity is defined as a company, private business corporation, a syndicate, a partnership, or any other associations of persons, whether corporate or unincorporated, which has a business character. A registered business entity means a company or a private business corporation, registered or incorporated in terms of the Act.

However, in terms of s 4, the Act does not apply to certain business entities, namely, banking institutions, building societies, insurers, microfinance enterprises and cooperative societies. All of these are governed by their own separate enactments.

The Act provides for different types of companies. The term company means a company incorporated under the Act or a foreign company. Some of the types of companies provided for under the Act include a private limited company, a public limited company and a co-operative company. Besides companies there is also what is called a private business corporation.



- Private company. Is a company other than a co-operative company, which by its articles of association—
 - restricts the right to transfer its shares; and
 - limits the number of its members to fifty, not including persons who are in the employment of the company or former employees; and
 - prohibits any invitation to the public to subscribe for any shares or debentures of the company.
- ▶ **Public company.** Is a company, including a co-operative company, which is not a private company and may invite members of the public to subscribe to its shares. Members may exceed fifty.
- ► Co-operative company. Is a company, other than a private company which —
- 1. in its memorandum of association states that its main object is one or other or both of the following -
 - the provision for its members of a service facilitating the production or marketing of agricultural produce or livestock.
 - the sale of goods to its members

2. by its articles of association

- restricts the right to transfer its shares; and provides that its ordinary shares shall be of one class only; and
- fixes a limit to the number of shares which may be held by any one member; and
- regulates the voting rights of its members such that every *member* shall have at least one vote in respect of the conduct of the affairs of the *co-operative company* but, save in specified circumstances where up to six votes are allowed; and
- limits the dividend which may be paid on its shares to a rate not exceeding ten per centum per annum on the amounts paid up thereon; and
- provides for the distribution of a part or the whole of its profits amongst its members on the basis of certain or all of their business transactions with the company.
- **3.** is required to establish a reserve fund which may be used for any purpose for which the share capital of the co-operative company may be used but which shall not be available for distribution to members except in the event of the winding-up of the co-operative company.
- Private business corporation. Is a private business corporation incorporated under the Act formed by natural persons:
 - A PBC must have a minimum of one member and a maximum of twenty members;
 - Only individual natural persons acting in their own right may be members of a PBC and no partnership, association or body corporate or other legal person shall be a member, whether directly or indirectly.



Formation, registration, and incorporation of companies and other registered business entities

The Act provides detailed requirements and formalities for the formation and registration of companies and registered business entities.

In relation to companies these may be formed by one or more persons who subscribe their names to a memorandum of association. The person may be a natural human being or a legal person.

The Act prohibits the formation of associations or partnerships exceeding twenty persons for the purpose of carrying on any business unless it is registered as a company or as a private business corporation or is formed in pursuance of some other law. Exceptions are professional associations or partnerships such as lawyers and doctors.

There are several requirements for registration:

► Constitutive documents: Lodging with the Registrar the constitutive documents of the company or PBC:

Memorandum of association. This applies to all companies. It provides details of like,

- The name, address, membership, and objects of the company.
- undertaking that the liability of the members is limited.
- that each member undertakes to contribute to the assets of the company in the event of
 its being wound up while he or she is a member or within one year after they cease to be a
 member; and, for payment of the debts and liabilities of the company contracted before they
 cease to be a member.

Incorporation statement. This applies to a PBC. It includes things like:

- The name, postal and physical address of the PBC.
- The full name of each member and his or her national identity number.
- The percentage of each member's interest in the PBC taking the total of members' interests as one hundred per centum;
- The amount of each member's contribution to the assets of the PBC including in cash or in property or in services.
- The name and postal address of the accounting officer of the PBC and the objects of the PBC; and,
- an incorporation statement which is signed by; (a)every person who is to become a member of the PBC and(b)a person who is qualified to become the accounting officer of the PBC upon its incorporation.

Valid name: There are certain formalities regarding the name of the entity which must be complied with:

- Different type of companies or entities must carry certain prescribed words as their last words:
- A company. The name of a company must have the word "Limited" as the last word.
- A private company must have the word "(Private)" as the penultimate word.



- For a co-operative company, the word "Co-operative" or the abbreviation "Co-op" must be inserted as the last word.
- For a PBC, it must have the words "Private Business Corporation" as the last words of the name or the abbreviation "PBC", in capital letters, at the end of the name.
 - The Registrar may refuse to register a company or PBC with a name which-
 - 1. is identical to that under which another company or PBC is already registered, or which is so similar to any such name as to be likely to deceive.
 - 2. is likely to mislead the public.
 - 3. is blasphemous or indecent or likely to cause offence to any person or class of persons.
 - 4. suggests patronage of the Government or some other authority or organisation unless the consent thereof has been obtained.
 - 5. is undesirable for any other reason (s 25).
 - Articles of association. At registration or after incorporation a registered business entity must
 incorporate its articles of association. These set out the internal rules of the entity, regulating
 its management. The Act provides for model articles of association.
- Certificate of incorporation: If the Registrar is satisfied that the memorandum of a company or an incorporation statement of a PBC, comply with the Act, she / he shall register the company or PBC.

On registering the Registrar shall -

- assign a registered number to the company or the PBC;
- return one copy of the memorandum of association or the incorporation statement to the applicant with the date of the registration endorsed thereon; and,
- issue a certificate of incorporation.

The certificate of incorporation shall be conclusive evidence that all the requirements of this Act in respect of registration have been met and that the company or PBC is duly incorporated under the Act. And are binding on the company and PBC and their members.

The company or PBC shall become incorporated from the date of issue by the Registrar of its certificate of incorporation. And shall become a body corporate, with the capacity and powers of a natural person of full legal capacity in so far as a body corporate is capable of having such capacity and exercising such powers, until it is struck off the register or declared insolvent. (s 19).

Administration and duties of companies and PBCs

Once a business entity is incorporated under the Act, it must comply with various duties and requirements set out in the Act. These relate its internal administration, management and duties of its members and office bearers. More stringent requirements apply to companies than to PBCs.

Companies: For companies' major duties and formalities include:

- To file annual returns on the situation of the company including directors, shareholding, auditors and register of members.
- To maintain proper annual financial records which give a true and fair view of the state of affairs of the company and to carry out annual audits.



- To hold annual general meetings of members.
- To have a board of directors, not fewer than two and not more than fifteen, depending on the number of shareholders and whether a private or public company. One of the directors must be ordinarily resident in Zimbabwe.
- Criminal liability for the director of a company for fraudulent, reckless, or wilful failure of financial accounting and falsification of records.

PBCs. For PBCs, major duties and features include:

- Duty to maintain financial records and hold annual members meetings.
- Every member of the PBC, excerpt minors, shall be an agent of the PBC for the purpose of the business of the PBC and their actions shall bind the PBC if inter alia, such acts were authorised, expressly or impliedly, by the PBC or were done for carrying on, in the usual way, business of the kind carried on by the PBC unless the member so acting has in fact no authority to act for the PBC in the particular matter and the person with whom he or she is dealing knew or ought reasonably to have known that he or she had no authority.
- Every member may take part in the management of the affairs of the PBC. Any difference arising between members in connection with the affairs of the PBC shall be decided by majority vote.
- A PBC shall not directly or indirectly pay any dividend, make any distribution, repay any contribution, make any other payment or transfer any property to any member by reason only of their membership unless, immediately after the payment or transfer, the PBC's assets, fairly valued, will exceed its liabilities and it will be able to pay its debts as they become due.
- Unfair prejudice. A member may apply to a court for a protection order on the ground that the PBC's affairs are being or have been conducted in a manner which is unfairly prejudicial to their or members' interests or that an act or omission of the PBC is or would be prejudicial.
- A court may grant an order of cessation of membership if satisfied that inter alia a member has become permanently of unsound mind or permanently incapable of performing duties as a member; guilty of conduct prejudicial to the business of the PBC; wilfully or persistently committed a breach of the PBC's by-laws, or conducted themselves in matters relating to the PBC that it is not reasonably practicable for the other members to carry on the undertaking in association with him or her;(e) or other circumstance the court considers just and equitable.
- A PBC may convert to a company and vice versa on making the necessary application to the Registrar and fulfilling the necessary formalities.

Formalities and duties common to companies and PBCs

Certain formalities and duties apply to both companies and PBCs. These include the following:

- Duty of care and business judgement rule. Every manager of a PBC and every director or officer
 of a company has a duty to perform as such in good faith, in the best interests of the registered
 business entity, and with the care, skill, and attention that a diligent business person would
 exercise in the same circumstances. And when business judgments are made, they honestly
 believe same to be in the best interests of the company or PBC- s 54.
- Duty of loyalty. A manager or controlling member of a PBC and a director, officer or controlling member of a company has a duty to act with loyalty to that registered business entity or its subsidiary- s 55. The duty of loyalty includes-



- not to use property of the business entity for their personal benefit or for another person other than the entity; not to disclose confidential information of the entity or for their personal benefit; to communicate relevant information to the board or members; not to abuse the person's position in the business entity for their personal benefit; not to compete in business with the business entity; not to accept a material benefit from a third party for doing or not doing anything in their official position; to never knowingly cause harm to the entity; and to serve only the registered business entity's interest in all transactions involving the entity in which the person has a personal interest.
- Any person having dealings with a registered business entity or with someone deriving title from a registered business entity shall be entitled to make specified assumptions including that the company's or PBC's internal regulations have been duly complied with.
- Criminal liability for company or PBC officials, members or any person for false statements
 and oaths in any statement, return, report, certificate, statement of financial position or other
 document required by or for the purpose of any provisions of the Act.
- Civil and criminal liability for fraudulent, reckless, or grossly negligent conduct of business by
 a director, present or past, or any other persons who were knowingly parties to the carrying
 on of the business in such manner or in such circumstances. Such an "impugned person" shall
 be personally responsible, without limitation of liability, on application to the High Court by
 any affected person or the court on its own, for all or any of the debts or other liabilities of the
 company or PBCs the court may direct.
- Civil penalty orders. Where there is default of compliance with provisions of the Act, the Registrar
 may, in addition to, and without derogating from, any criminal or non-criminal penalty that may
 be imposed by the Act serve upon the defaulter an appropriate civil penalty order.

PATHWAYS TO FORMALISATION UNDER THE ACT

The formalities and requirements for registration and functioning of registered business entities are quite considerable and complex and therefore a formidable barrier to formalization of economic units under the Act. Not surprisingly in the 2012 SMES survey only 15% of SMES were formalized, and of this only 17% were registered under the old Companies Act.

However, the new Act has opened new pathways for small businesses in the informal economy towards formalization. Firstly, has been the recognition under Chapter VI of the Act of services provided by what are termed business entity incorporation agents in the formation and registration of companies and PBCs, and business entity service providers in the running of registered business entities. Related to this is enhanced regulation of shell and shelf companies. and agents who promote such. Secondly and most importantly are new provisions in Part II of Chapter IV which provide for the voluntary registration of the constitutive documents of unregistered associations or business entities with the Registrar.

(iii) Business entity incorporation agents and business entity service providers, and shell and shelf companies

Some of the main and daunting challenges for small and medium businesses to transition to formality are the requirements and formalities for registration and the regular routines for reporting and returns once the company is running. Services related to this were traditionally provided by recognized professionals such as lawyers, chartered accountants, Public Accountants and Auditors or chartered secretaries. The services of these were beyond the capacity of most players in the informal economy.



However, the Act has now expanded the pool of persons who can provide these services to include licensed persons with a Business degree or otherwise qualified companies. This has brought down the cost to the advantage of the informal economy. Associations of the informal economy may enter into arrangements with such persons to provide services to their members.

Business entity incorporation agent. The formation, registration and incorporation of a company or PBC may be done through a business entity incorporation agent. (s 292). This is a person licensed to do business entity registration work." This means the preparation by any person for profit, or otherwise than on his or her own behalf, of any document for registration with the Companies Office or for attestation or execution by the Registrar.

Business entity provider. As regards the duties and formalities of running a registered entity under the Act, one may engage the services of a business entity service provider. This is a person licensed to do the work of providing services that ensure the business complies with the statutory requirements under the Act. This includes –

- acting as, or arranging for another person to act as, a director or secretary of a company or a partner of a partnership;
- providing a registered office, business address or accommodation, correspondence or administrative address for a company, PBC;
- managing the share registers of other companies and providing services pertinent thereto such as the issuance of share certificates and the payments of dividends to shareholders on behalf of the companies in question;
- acting as, or arranging for another person to act as, a nominee shareholder for another person.

(iv) Shell and Shelf companies

Another pathway to formalization for small businesses and avoiding the hustles involved in forming and registering a company is to buy a ready-made company, called a shelf or shell company. These may be bought from a business entity incorporation agent.

- Shelf company means a shell company incorporated or registered in the name of a person who
 intends to sell or otherwise transfer it to another person or persons, who in turn may operate it as
 an active business entity, a shell company or a shelf company.
- Shell company means a company that, apart from submitting regular statutory returns and notices to the Registrar, is not being operated in accordance with its stated objects, or is not otherwise active in business for more than twelve (12) months after its registration.
- An active business entity means a company or private business corporation that, in addition to submitting regular statutory returns and notices to the Registrar, is being operated in accordance with its stated objects, and is otherwise active in business.

(v) Voluntary registration of unregistered associations

Under the new Act an unregistered business association may register their constitutive documents like their constitution with the Registrar. This is a major new pathway to formalization for informal economy businesses. (Part II, Chapter IV of the Act).

An unregistered association means any business entity which is an association of persons whatsoever not registered under any law whether incorporated or unincorporated including any partnership, syndicate, consortium, joint venture.



The authorized representative of an unregistered association may on payment of the prescribed fee register with the Registrar a copy of the constitutive document relating to the entity in question. The constitutive document may comprise of a partnership agreement, a joint venture agreement or a constitution, or other contract or agreement by which the entity or unregistered association, in question is constituted.

On registration of the constitutive documents, the entity will be entitled to be provided with a certificate of registration by the Registrar.

Registration of an unregistered association does not confer on the entity the status of body corporate like with companies and PBCs but still provides some benefits of registration, albeit in restricted form.

Any changes to a constitutive **document** registered must be notified to the **Registrar**, failure to do so is a criminal offence.

Advantages of a certificate of registration

- A certificate by the Registrar shall be presumptive proof of the facts thus certified and be admissible as such in all legal proceedings.
- The certificate is evidence that the association meets one of the key requirements of a common law universitas, and accordingly incorporated under the common law.
- Protection of the name of the association from being poached by other business entities. The name is protected under the Act.
- Certification makes it easier for the unregistered association to interact and engage with other business entities as well as the various regulatory authorities and development agencies.
- Certification is potentially the first step to full formalization to for instance a PBC or a company.

Group Activities for Module 4/Unit 1

In your existing groups, answer the following questions:

- 1. For those Tutorial Group members not registered as companies, or co-operatives, why are they not registered and what advantages or disadvantages has this given them?
- 2. For those who are registered, why have they registered and what advantages or disadvantages does this give them?
- 3. Have some members of the Tutorial Groups ever had their goods seized or confiscated by council? What was the reason and were they able to get them back or be compensated?
- 4. Discuss the importance of formalization of your informal business entities and the relevance of ILO Recommendation 204 to the informal economy in Zimbabwe.



Module 4/Unit 2

Legal framework on the operating environment of informal economy businesses

This Unit covers the following topics:

- Legal regulatory framework: An Introduction
- Major general statutes: Local authorities
- Other major statutes
- Local authorities By-Laws

(a) Legal Regulatory Rramework: An Introduction

The legal and policy framework has a major influence on operations of the informal economy and the capacity for transition from informality.

The legal framework has an impact on several areas including:

- licensing and trade permits.
- conditions and restrictions on trading and work; cleanliness, hygiene and safety.
- access to, organization and management of workspaces; evictions, impoundment, seizures of property;
- empowerment of marginalised groups including women, youth and persons living with disabilities;
 and,
- enforcement and protection of rights and taxation.

Besides the formal legal regulatory framework, the informal economy is also marked by the significant influence of informal regulatory frameworks, operating outside the law but substantially and directly impacting the right to work in the informal economy. This includes political parties' networks.

In relation to the formal regulatory laws there are two important things to be aware of. Firstly, the history of the laws, in particular their origins in the racist and exclusionary laws and policies of colonial Rhodesia. We discussed these in Module 1 showing that the approach of the laws was one of hostility, restriction and prohibition of the informal economy. Most of these laws remained after independence in 1980 with amendments to remove some of the more openly racist provisions but not the essence of their suppression of the informal economy.

The second aspect to be cognisant of is that the legal regulatory framework is based on a hierarchy of laws. At the apex of these laws is the Constitution. Then are the other laws including Acts, statutory instruments, regulations and municipal by-laws and policies. The latter must be compliant with the Constitution or are rendered invalid.

As discussed in Unit 2 of Module 2, the 2013 Constitution provides a fundamentally different approach to the earlier period. It is based on what is called the developmental and inclusive approach. This recognises the right to work, including in the informal economy as basic human right. We looked at various provisions of the Constitution that recognise, protect, and advance the rights of workers in the informal economy. These include the right to equality, to human dignity, to work, to freedom from unfair discrimination.



Below the Constitution are various major statutes that regulate the informal economy. Some are of general application applying universally to the many and diverse forms of sectors in the informal economy. Then are statutes that may deal with specific sub sectors like transport, bottle stores and shops. Below these are by-laws and policies made by local authorities. By-laws provide the main legal framework for regulation and control of the informal economy.

(b) Major general statutes: Local authorities' statutes

Of the general statutes that regulate the informal economy the most important are the local authority ones that establish and regulate local authorities.

The two main Acts are the Urban Councils Act [Chapter 29:15] and the Rural and District Councils Act [Chapter 29:13]. The former is the most important as it regulates the urban centres which are the principal centres of the informal economy. The Acts are in terms of s 276 of the Constitution. This provides that:

- 1. Subject to this Constitution and any Act of Parliament, a local authority has the right to govern, on its own initiative, the local affairs of the people within the area for which it has been established and has all the powers necessary for it to do so.
- 2. An Act of Parliament may confer functions on local authorities, including -
- (a) a power to make by-laws, regulations, or rules for the effective administration of the areas for which they have been established.
- **(b)** a power to levy rates and taxes and generally to raise sufficient revenue for them to carry out their objects and responsibilities.

These laws affect the informal economy in two ways. Firstly, the statutes contain provisions directly regulating the informal economy including: the issuing of trading licenses and permits; provision of commuter transport services; provisions on co-operatives; provisions on enforcement, offences, penalties and appeals; power of the Minister to approve municipal by-laws and issue model. There is overall power of surveillance and oversight over policy and major decisions by local authorities. Section 314 of the Urban Councils Act provides that the Minister may reverse, suspend, rescind resolutions, decisions, or actions of a council not in the interests of the inhabitants or is not in the national or public interest.

Secondly the Acts are the enabling enactments for by-laws made by local authorities. By-laws are the legal instruments that have by far the most direct impact on the informal economy.

The main problem with these two statutes and the by-laws made under them is that they have not been aligned to the 2013 Constitution, which they predate. They are slanted against the urban poor and were founded on a philosophical worldview which is the opposite of the present Constitution. Whereas the Constitution promotes a developmental, facilitating, and inclusive approach, the two Acts are premised on the restrictive, hostile approach to the informal economy. This was retained from the colonial era and only slightly modified after independence.

This is a major difference with South Africa. The Zimbabwean constitution is inspired by the Constitution of South Africa. In South Africa the main Act that regulates the activities of businesses, including the informal economy, is aligned to the Constitution, that is the Businesses Act No. 72 of 1991 as amended. The Business Act resulted in a radical shift of the local authority legal framework governing the informal economy. It has been commented [SALGA, 2014]:

"The Act brought about a significant shift in how informal trade was regulated in South Africa by effectively inverting the legal framework, from a framework primarily aimed at repressing, persecuting and prosecuting informal economic activities to a framework which recognises informal trade as a critical sector that contributes to the economy and people's ability to support themselves."



The influence of the Businesses Act is manifest in the by-laws and policies of major South African cities like Cape Town, eThekwini and Johannesburg which show a radical difference from those of Zimbabwe.

(c) Other Major Statutes that Impact on the Informal Economy

There are several major other statutes that have an impact on the operating environment of the informal economy. We summarize these below.

- ▶ **Regional, Town and Country Planning Act** [Chapter 29:12]. The Act makes local authorities local planning authorities responsible for the preparation, adoption and determination of regional plans, master plans, local plans and approved schemes for the co-ordinated and harmonious development or redevelopment and other uses of land, including measures for
 - i. the regulation of the use of land and the construction and use of buildings; and
 - ii. the conservation and improvement of the physical environment, including the preservation of buildings of special architectural merit of historic interest; and
 - iii. the economic development of the planning area; and
 - iv. the movement of traffic therein, including the closure and diversion of roads

Local planning authorities are issued with powers of enforcement of the Act including issuing enforcement orders and prohibition orders to stop any developments that may not be in accordance with the approved master plan, local plans or approved schemes. The Act was the basis on which cottage industries in residential areas were prohibited but this was amended by way of S.I. 294 of 1994 which allowed for such cottage industries in residential areas.

- ▶ Shop License Act [Chapter 14:07]. This Act provides for the control and licensing of trades and businesses carried on in shops, stores, and fixed places of businesses. It makes it mandatory for every person operating a shop in the local authority to have a license or trading permit. Local authorities are the licensing authorities. It provides offenses and penalties for breach. The origin of the Act also lies in colonial Rhodesia and therefore hostile to the informal economy and inconsistent with the spirit and letter of the 2013 Constitution. The Act was amended in 2018 to facilitate ease of doing business but still remains hostile to the informal economy.
- ▶ Trade Measures Act [Chapter 14:23]. The purpose of this Act is to define and authorise the units of measurement which may be used in trade, for the control, inspection, sizing and resizing of measuring equipment and protection of the public in relation to the sale of articles and other materials by measurement of numbers. The Act was enacted in 1974 and only moderately amended in 2001.
- ▶ Consumer Protection Act [Chapter 14:14]. This Act aims to facilitate the protection of consumers by providing for principles of a fair, efficient, sustainable and transparency marketplace for consumers and businesses. This includes provision of fundamental consumer rights including the right to fair value, good quality and safety of goods and services and the right to choose of goods, services and to select suppliers. The Act applies to both formal and informal businesses.
- ▶ Income Tax Act [Chapter 23:06]. The Act was amended in 2022 to provide for a presumptive tax (a tax based on the presumed income of a person) on various trades and occupations in the informal economy including informal traders, small scale miners, passenger transport vehicle operators, hairdressing salon operators, cross-border traders and cottage industry operators.



- ▶ Criminal Law (Codification and Reform) Act [Chapter 9:23]. Provides, amongst others, for criminal offences and penalties which criminalise and impact on activities in the informal economy in particular the offence of criminal nuisance. Provides a schedule of fines and imprisonment terms on conviction for a criminal offence.
- ➤ Small and Medium Enterprises Act [Chapter 24:12]. An Act to promote and develop micro-, small, and medium enterprises whether operating in the formal or informal sector for sustainable development. It places a duty on the Government to create an economic and regulatory environment that promotes MSMEs in order to develop and enhance their contribution to national development. This includes the establishment and funding of schemes to assist MSMEs.
- ➤ Co-operative Society Act [Chapter 24:05] An Act to provide for the formation, regulation, functioning and dissolution of co-operative societies in accordance with co-operative principles. And to provide for a Central Co-operative Fund to assist the development of co-operatives.

(d) Local authorities By-Laws

By-laws by local authorities have the largest effect on operations of the informal economy. Local authorities are licensing authorities for informal trading licenses, for cottage industry licenses, for shop licenses and are local planning authorities for building and developments in their areas of jurisdiction. Indeed the 2012 MSME survey revealed that of those small and medium enterprises that were formalized, 71% of these were through licensing with local authorities.



Source:ZCIEA

Engagement between ZCIEA Management and territorial leadership with Kadoma Town Council on the need for an M.O.U, 2020



As noted with their parent Act the problem with virtually all by-laws across Zimbabwe is that they have not been aligned to the 2013 Constitution. Nor are they consistent with developmental enabling Acts and policies of Government like the Small and Medium Enterprises Act, the Co-operative Society Act and NDS-1. Nor do they align with R204.

Weaknesses of by-laws: Several weaknesses are noticeable:

- ▶ The by-laws have a slant of prohibition, repression, and criminalisation of the informal economy, inherited from the Rhodesian colonial legislation.
- ▶ The by-Laws do not contain a Preamble that outlines their vision, aims and objectives, in particular as derived from the institution.
- ▶ There is an overwhelming presence of provisions criminalising conduct or activities in the informal economy.
- ▶ They are largely written in technical, legal language which is not accessible to the ordinary persons.
- ▶ They are written in English with no indigenous language or sign language equivalents even if s 6 of the Constitution recognises these languages as officially recognised languages of Zimbabwe.
- ▶ Generally, they are not easily available or accessible with only a few on the internet such as those for Bulawayo and Redcliff. In preparation for this Manual, we requested from the Ministry for copies of By-laws, for several towns but the request was declined. This despite that s 228 of the Urban Councils Act provides that By-laws should be readily available to the public. And that s 6 of the Access to Information and Protection of Privacy Act [Chapter 10:27] creates a duty on all Government ministries and agencies to avail information and documents of a public character.

Although s 230 of the Urban Councils Act provides the Minister with powers to establish Model By-Laws, none have been done to date. An attempt has been made to do the same by the Association of Chamber Secretaries, but this has stalled and in any case was without involvement of all stakeholders especially associations of the informal economy.

However, it's not all been gloomy. The closest that has been made to update By-Laws is with the **Bulawayo City Council (Hawkers and Vendors) By-laws, 2020.** These were done with the assistance of UN agencies and have provided the precedent for most subsequent By-laws in other towns such as the **Redcliff Hawkers and Vendors By-Laws, 202, S.I. 23 of 2022.** However, even these do not find themselves or recognise the need for alignment to the 2013 Constitution and its underlying developmental approach to promote and advance the informal economy, including transitioning to formality.

Contrast this with by-laws in the major cities of South Africa which have been aligned to the Constitution. For instance, the City of Cape Town Informal Trading By-Law is in English, Afrikaans and isiXhosa. The By-Law is available on the internet. It consolidates into a single By-Law the various by-laws dealing with the informal economy. The By-Law is summarised in a popular guide in the main languages which includes contact details of city officials and department to contact for applications for licenses, steps to take to make applications, how to file complaints and appeals and joining informal trader associations. The By-Laws of all the major cities have Preambles which align them to the developmental approach provided in the Constitution.



City of Cape Town Informal Trading By-Laws, 2009

1. Preamble

- **1.1** In terms of the Constitution, the City is responsible for "trading regulations", "markets", "street trading" and "beaches" within its area of jurisdiction. One of the City's objects is to promote social and economic development.
- **1.2** The City recognises the key role that informal trading plays in poverty alleviation, income generation and entrepreneurial development and, in particular, the positive impact that informal trading has on historically disadvantaged individuals and communities.
- **1.3** The City acknowledges the need to adopt a developmental approach to the informal trading sector in order to create an environment that is conducive to the growth of businesses in the informal trading sector.
- **1.4** The City further acknowledges the need for a balanced relationship between the informal and formal trading sectors in order to promote social and economic development within a well-managed municipal area.
- 1.5 This By-Law, accordingly, aims to:-
- **1.5.1** Consolidated in a single By-Law, the By-Laws passed by the predecessors in law of the City of Cape Town.

Another example is that of the eThekwini municipality:

eThekwini Municipality: Informal Trading By-Law, 2014

WHEREAS the council recognises the key role that informal trading plays in poverty alleviation, income generation and entrepreneurial development and, in particular, the positive impact that informal trading has on historically disadvantaged individuals and communities.

WHEREAS the council recognises the need to adapt a developmental approach to informal trading within a well-managed municipal area.



Finally, is the City of Johannesburg Metropolitan by-law which provides:

City of Johannesburg Metropolitan Municipality Informal Trading By-Law

Purpose of By-Law

- A. The City recognises the objective of its existence in terms of the Constitution, which includes
- (i) To promote social and economic development.
- (ii) To promote a safe and healthy environment; and
- (iii) Municipal planning, trading regulations, licensing and control of undertakings that sell food to the public, markets, public places, municipal roads and street trading.
- **B.** The City therefore recognizes the need to adopt a developmental approach to enable access to job and entrepreneurial opportunities within the Informal Trading sector, to harmonise the relationship between the Informal Trading sector and the formal trading sector and to facilitate the migration of Informal Trading into the formal trading sector.

In order to achieve and fulfil the above-mentioned constitutional objective and responsibility, and after an extensive consultation process with the relevant stakeholders, the City has adopted an Informal Trading policy, which aims at creating opportunities for the Informal Trading sector to share in the benefits of, and further contribute to the City's economic growth. Persons

Thus, a major problem of the Zimbabwe by-laws is that they are not aligned to the 2013 Constitution, whose underlying developmental approach rhymes with the principles of R204. Note that although the By-laws in Zimbabwe have not yet been aligned to the Constitution, the supremacy of the Constitution under s 2 means that all By-Laws, policies, actions and decisions of local authorities and their officials must still be in line with the Constitution, otherwise they would be invalid. Particularly bad by-laws, policies and practices can still be constitutionally challenged before the superior courts.

However, preferably, and less costly would be for such By-Laws to be aligned to the Constitution. An urgent area of advocacy and reform is the need to push for the adoption of Model-By Laws by the Minister under the Urban Councils Act and ensuring that these are consistent with the 2013 Constitution. Indeed, associations can develop draft Model By-Laws for consideration by Government and other stakeholders like UCAZ. A particular opportunity arises in that the City of Harare, which is the biggest and capital city of the country has outdated By-Laws made in 2014 and in 2023 adopted a progressive City of Harare SMEs Policy.



Group Activities for Module 4/Unit 2

In your existing groups, answer the following questions:

- 1. Discuss some of the major statutes affecting the operation of your informal economy businesses in Zimbabwe.
- 2. How have the bylaws affected the operation of your informal economy businesses?
- 3. In your own consideration, what are the main challenges posed by the bylaws governing the operation of the informal economy businesses in Zimbabwe?
- 4. Discuss how the informal economy stakeholders can engage the government of Zimbabwe in developing model bylaws that align to the Zimbabwe Constitution of 2013 and to the ILO Recommendation No. 204 to enhance transition from informality in Zimbabwe.





Module 4/Unit 3:

Operating Legal Environment: Licensing and Selected Areas

This Unit covers the following topics:

- Introduction
- Licensing and Trade permits
- Conditions, Restrictions and Measures
- Evictions, Impoundment and Seizures of Goods
- · Criminal offences and penalties
- Taxation and levies
- Finance, Empowerment, Procurement and Development

(a) Introduction

The operating legal environment has a major impact on the development of the informal economy including its capacity for transition from informality to formality.

The legal framework on the environment covers a large and diverse area. In this Unit we select a few which have the largest impact. They include areas like licensing and trade permits; conditions and restrictions; hygiene and safety; access to, organisation and management of workspaces and politicisation; evictions, impoundment, and seizures of property; empowerment, procurement and affirmative action for marginalised groups including women, youth and persons living with disabilities; and taxation.

These areas will be looked at with the background and context of the Constitution as well as R204.

(b) Licensing and trade permits

(i) Applications, process and right to work

Every person has the right to choose and carry on any profession, trade, or occupation. But the right is not absolute. It may be regulated by law, such as by Acts and by-laws.

One such major qualification is the requirement to have a licence or permit in order to practice one's profession whether this be to trade, open a shop, operate a cottage industry or transport business or other activity in the informal economy. Local authorities are the main licensing authorities for most trades and occupations. The license or permit will have specified conditions, restrictions and prohibitions which must be complied with. Usually, it is for a specified period and must be renewed on regular intervals.

The Urban Councils Act authorises local authorities to pass by-laws and regulations, with the approval of the Minister, in areas under their jurisdiction. This includes by-laws on the licensing, registration, and regulation of various operators in the informal economy. These include traders in markets, marketing gardening, sale and supply of food, hawkers, vendors, street traders or cottage industries such as electricians, plumbers, hairdressers, launderers, funeral parlours, boarding houses. See 3rd Schedule to the Act, Parts XI to XII, sections 90 - 106.



Consequently, all local authority by-laws make it a requirement for persons for one to apply for an appropriate license in order to work and operate in the informal economy. Certain requirements are made to get such licenses.

Bulawayo City Council by-laws

The Bulawayo City Council (Hawkers and Vendors) By-Laws, 2020 requires a license for any person to work as a hawker, vendor, hawkers' employer and vendors' employer and a stall or table holder.

- ▶ Hawker that is "any person who carries on the business of selling goods whilst travelling about for that purpose from place to place with the goods, either on foot or with a carrier but does not include: -
 - (a) a baker or his employee in respect of the sale of bread.
 - (b) a dairy marketing authority or a dairyman or its or his employee, in respect of the sale of milk
- ► Hawkers' employer and vendor's employer
- ▶ **Vendor** "means any person who sells goods from one or more fixed places in, or any public place as designated by council and should be a holder of a license or a permit.
 - 'public place' "means any bridge, enclosure, footpath, garden, open space, pavement, road, sanitary lane, sidewalk, square, subway or street of the nature of a thoroughfare vested in or controlled by the council and to which the public or any section of the public has access.
 - permit' "means
- ➤ Stall or table holder "means any person who carries on the business of selling goods in or within a flea market premise or designated site."
 - stable or table "means any surface constructed above ground level, or similar structure, whether or not it is situated within a building or under a roof or other structure.
 - flea market "means a place or a type of bazaar where a number of stall or table holders carry
 on the business of selling inexpensive or second-hand goods in one controlled area that is
 governed by an imposed conduct.
 - designated area (site?) "means a stand or site set aside for vending or flea market purposes.

It is mandatory to have a license if a hawker, vendor, stall or table holder or a hawker's employer or vendor's employer. Section 6 provides that no person shall engage, allow or employ another, whether as an agent, a servant, a hawker, a vendor or stall or table holder -

- (a) unless -
- (i) the first person mentioned is the holder of a hawker's license, or a vendor's employer's license, a flea market vendor's license, as the case may be.
- **(b)** unless the hawker or the vendor concerned is the holder of a valid Medical Certificate of Health for the sale of food.

Permit: This "means any document issued on behalf of the council by a designated officer permitting the use of stall, table or stand at a people's market."

• A designated officer "means a person assigned by council to be in charge of the people's market.



This is a more flexible and less formal authorisation issued in respect of a trading right at a people's market and by an authorised official who unlike for the license.

The application is made to the council. The following procedures are required:

- ▶ Be in the form prescribed in the Second Schedule
- Be accompanied by -
 - (i) the appropriate fee.
 - (ii) two recent identical passport size photos.
 - (iii) a valid Medical Certificate of Health in the case of an applicant who wishes to sell food.
- ► The application must relate to areas where trading is permitted and not those where trading is prohibited or restricted under the First Schedule.

The fees are fixed through a council's resolution. The application form requires information such as: the personal details of the applicant like names, address; type of food cart, bay, table to be used; goods to be dealt in; area applicant wishes to work; number of hawkers or vendors to be engaged or employed as agents or servants and how these will be dressed or equipped so as to be patently identified with the applicant. The applicant must confirm that they "have read and understood the council's by-laws pertaining to hawkers, vendors, stall holders and table holders."

The By-Law provides in the First Schedule a list of areas where trading is prohibited or restricted and where it is allowed:

Prohibited areas	Allowed areas
restaurants, hotels, butcheries	Designated vending sites
service stations, garages	Areas around schools and tertiary institutions
financial institutions professional bodies	Public meeting places
in front of all types of shops (except designated areas)	At all public institutions, eg churches, preschools, hospitals
on pavements or public walkaways, on	Along major tourist routes
roads	Major road intersections
parking places	All shopping centres.
sanitary lanes	All stadia and recreational area
any area restricted by Council	Any approved place



Further, the council may set aside land or premises for the purpose of people's markets and divide such land or premises into separate stands, stalls, or tables.

Prohibited Items: Sellers of second hand clothes are not permitted to sell "undergarments" including "bras, panties, socks, pantyhose." S 19 (5).

Permitted items to be sold: The items that can be sold are only those prescribed and subject to the approval of the Director of Health, namely:

PERMITTED ITEMS

- New and second-hand clothes, footwear, bolts and nuts, belts, and accessories
- Fruits, vegetables, tubers, dried food stuff
- Airtime, newspapers, and periodicals
- Cell phone chargers and accessories
- Eggs, amacimbi etc
- Firewood
- Homemade floor polish, brooms, wooden cooking utensils, scouring powders, etc.
- Herbalist and traditional medicines and services
- Roasting of nuts, sweet potatoes and maize
- Curios, flowers, worms, and nursery plants
- Tyres, tubes, empty containers, and other small mechanical merchandise
- Waste recycling, waste such as bottles, plastics, metals
- The list shall be reviewed from time in response to macroeconomic fundamentals and be approved by council in the first instance prior to allocation.



Denial of a license / permit: Section 16 provides for the reasons for which the "council may refuse to issue or renew a license or permit." These are, if -

- the applicant has failed to adhere to council by-laws and has been fined three consecutive times.
- the applicant is guilty of any offence under these by-laws.
- the applicant is guilty of any offence under the Urban Councils Act [Chapter 29:15]
- the applicant is guilty of any offence which involves carelessness, concerning, disregard for, cleanliness, hygiene, public health or public nuisance.
- sale of illegal items, sleeping at the site or fighting at the site.

City of Harare by-laws

The Harare (Vendors) By-Laws, 2014, S.I. 159 of 2014 are more narrowly defined than those for Bulawayo. They apply only to vendors at designated vending sites, whereas those for Bulawayo are consolidated to cover vendors, hawkers, vendors employers and hawkers' employers. They cover more sites in "public places."

A person wishing to operate as a vendor must have a permit or lease agreement. The permit or lease agreement are granted by the Director of Housing and Community Services. It is an offence to operate without these.

A vendor may be given a permit or lease agreement. A permit is a more flexible facility issued by the Director and whose duration seems to be for a day or month. The lease agreement is a more involving agreement signed with Council with a duration of up to a year.

- ▶ **Permit** means a permit issued on behalf of the Council by the Director of Housing and Community Services.
- ▶ Lease agreement "means a document signed between a vendor and Council setting out the terms and conditions governing their relationship."
- ▶ **Vendor** means any person who is a holder of a permit or lease agreement issued in terms of section 5 carries on the business of selling goods or foodstuffs within a vending site.
- ▶ **Vending site** means any land or premises set aside by the Council for the purpose of providing a place for the sale of any goods or foodstuffs. Vending categories are divided into three categories:
 - Category A- for the sale of any publications, newspapers, phone recharge cards and related items as Council may declare.
 - Category B- for the sale of dairy products and related items as Council may declare; and,
 - Category C- sites designated for the sale of any other goods or foodstuffs not specified above which may be sold in the vending site and approved by resolution of Council.

Grounds for refusal of permit: A permit or a lease agreement shall not be issued or renewed by the Council in the following circumstances:

- ▶ if, in the opinion of the Director of Housing and Community Services, the applicant has not complied with the relevant provisions of these by-laws.
- unless, in the case of an applicant intending to sell food, such articles of food have been prepared at licensed premises or other sources approved by resolution of Council from time to time; and



▶ if, in its opinion, there are sufficient vendors dealing in the goods in respect of which the permit is required in the area or on site, as the case maybe, in respect of which the permit is required.

Comments on Bulawayo and Harare By-Laws: The factors considered in issuing of licenses in both Bulawayo and Harare are very narrow. They do not comply with the provisions of the Constitution on empowerment and affirmative action for women, persons living with disabilities, blacks, youths and the need to achieve gender balance. The same is provided in national policy documents like NDS-1, Gender Policy and National Policy for Persons Living with Disabilities.

A crucial development has however occurred with the new City of Harare SMEs Policy passed in April 2023.

City of Harare Small and Medium Enterprises Policy, 2023

The City of Harare adopted a radical departure from the colonially inherited repressive and exclusionary framework to one aligned to the 2013 Constitution and its inclusive and developmental approach. This is contained in the City of Harare Small and Medium Enterprises Policy, of April 2023.

The Policy recognises the critical importance of the SMES acknowledging that the sector contributed 61% towards the country's GDP from 1991 to 2015. Employs over 100 000 workers. However, the sector remains characterised by "low productivity, low incomes, high poverty and lack of social protection."

The Foreword states:

High levels of Micro, Small and Medium Enterprises implies that the city has abundant resources that are not being fully and productively utilised. For the City of Harare, Small to Medium Enterprises development is a positive development as it contributes to the creation of jobs and alleviation of poverty and has the potential to expand further the City's economic base... It lays the foundation for the exercise of SMEs trading in a manner that is of benefit to those involved, that is traders, property owners and customers alike...

The objective of this policy is to close all the identified gaps in infrastructure development, social protection, regulating trading in Harare as well as empowering the Small to Medium Enterprises businesses.

Key and radical features in the City of Harare SMEs Policy

The new Harare Policy provides radical and important features to develop the SME sector including the informal economy. These include:

- ▶ All SMEs traders shall be registered with Council for them to operate in Harare. A "nominal annual registration shall be payable."
- ▶ A Certificate of Registration shall be issued to all registered traders.
- ▶ Council through the SME Committee shall consult its critical stakeholders in setting up tariffs and penalties for non-compliance.
- ▶ All unlicensed SMEs sector businesses shall be considered operating illegally and will be subjected by Council.
- Council shall keep a database of all SMEs business operating in Harare.
- ▶ Allocation of trading space on Council premises and land shall be based on the database and allocations "of trading space within Council shall be inclusive to cater for all groups in the society including women, the youth, and people living with disability.



- ► The implementation of the Policy will take into account cross cutting issues which include gender dimensions, youth development, disability, safety and health, and environmental issues.
- ➤ Council will mainstream issues of gender and disability and disadvantaged groups in all initiatives pertaining to SME development. There shall be Gender and disability disaggregated registers to indicate the number of men against women owning market stalls. 10% of trading stalls shall be reserved for people with disabilities.
- Markets and trading facilities shall be properly planned and regulated bearing in mind the economic needs of traders to match international best practices.
- ➤ Council shall consult its various stakeholders in the planning of SMEs. In this regard, Council shall take cognisant of the existence of various associations representing the SMEs sector to make use of the institutions for proper and inclusive planning.
- ▶ Local community members shall be prioritised and "Council shall reserve sixty (60) percent for the local community".
- ▶ Council shall set aside 10% of trade space for Council employees, with preference given to retirees.
- ► Council shall strive to harmonise all regulatory and compliance requirements to promote ease of doing business in the SMEs sector.
- ▶ All informal sector businesses are encouraged to transform from being informal to formal SMEs. Council shall put in place a mechanism that promotes transition of informal businesses to formal SMEs.

Regional comparisons: eThikwini Municipality and City of Cape Town

The City of Harare has come out with a progressive Policy which is largely aligned to the Constitution. What is now left for the City is to overhaul its By-Laws to create the legal basis for the new Policy. Inspiration may be drawn from major South African cities have gone to considerable extent in that direction thereby ensuring alignment with the Constitution:

eThikwini Municipality: The eThikwini By-law, 2014 takes into account the social-economic-racial, physical status of persons in allocating trading permits. Under s 12 the trading permit may be issued to a person who:

- does not already hold a permit in respect of any other informal trading site within the area of
 jurisdiction of the Municipality.
- is a South African citizen or, failing which has a valid work permit which includes, but is not limited to a refugee permit.
- does not employ more than 10 persons.
- does not have an interest in more than 1 entity or partnership which conducts informal trading.
- is currently unemployed, and on becoming gainfully employed surrenders such permit.

The Municipality may take into account affirmative action factors by giving preference to applicants who -

- are black persons.
- are unemployed.
- are entering the informal sector for the first time.



- do not share a household with an existing permit-holder unless the applicant is not a dependent on or financially reliant upon that permit-holder.
- are physically challenged

City of Cape Town. The Cape Town By-Law also provides for affirmative action in the granting of trading permits. It holds (s 8.5) that the municipality should take into account:

- "They need to give preference to applicants that are historically disadvantaged individuals";
- to new applicants.
- to the unemployed; and,
- to applicants who do not share a household with an existing permit-holder.

(c) Renewal of licenses, permits and lease agreements

Licenses issued to vendors, hawkers, stall or table holder or flea market employer's license are for a defined period.

Bulawayo City: In the case of the Bulawayo By-laws the following applies:

- ▶ Licenses and permits are valid for one year for up to and including the 31st of December of the year for which it was issued or renewed. Application for renewal is done in the month of December preceding the succeeding year for which the license or permit applies s 15.
- ▶ A person who has been allocated a bay, table or stall in a people's market shall vacate such a bay, stall, or table promptly on the expiry of the license unless he or has made an application for the use of such a bay, stall or table and has paid the required fee before such expiry s 10.
- ► On application for renewal the same conditions as when first applying for the license or permit apply. Additionally, renewal will be denied if in "the opinion of the Council" -
 - the renewal would adversely affect any existing trade or business carried on in the area of jurisdiction of the council; or
 - the goods sought to be dealt in ought not to be dealt in, in the interest of public health, public safety or public morality; or
 - any food cart, container, stall, storage premises, clothing or equipment used, or to be used, in connection with the business for which the licence is required is unsuitable in the interest of public health; or
 - there are sufficient hawkers or vendors dealing in the goods, in respect of which applicant requires the license or permit; or
 - has not paid for the license or permit or rentals for the previous year.

City of Harare. In the case of the Harare By-Laws the following applies:

- ► For a vendor's permit, the period for which the permit of a licensed vendor is valid shall be stated on the permit. The permit may be renewed on a daily or monthly basis.
- ► For a lease agreement, the period of duration shall be stated on the lease agreement. It shall be valid until the 31st of December of the year in which it was entered, or any other date as determined by the Director of Housing and Community Services s 5 (7). shall bear the month of the permit.



City of Harare SMEs Policy: The Policy still contains undue restrictions on the renewal and vacation of permits. It provides that a stallholder "shall immediately vacate such stand / stall upon the expiry of her/his permit or Lease Agreement unless it has been renewed. Vacation is enforced "forthwith" on default of rent or subletting. It provides that in situations of death or serious incapacitation of a stallholder the lease shall automatically be terminated and re-allocated to others on the waiting list. However, the Director shall have "the prerogative to consider the retention of removal of certain stallholders on circumstantial or humanitarian grounds." [s 18]. However, it also provides that in "the event of leaseholder, family members shall continue with the lease" [s 20.7].

(d) Transfer and sale of licenses

There are severe restrictions on the transfer and sale of licenses and permits in the By-Laws of most local authorities, including Harare and Bulawayo.

Bulawayo: As regards the Bulawayo By-Laws the following restrictions apply:

- a license issued to a bay-holder, stallholder, or table-holder in a people's market "shall not be transferred by the person to whom it was issued to any other person without the authority of the council." s 9 (3).
- Any person who transfers to another or makes fraudulent use of any license, certificate issued under the by-laws with intent to deceive shall be guilty of an offence.

Harare: The Harare By-Law provides that no permit or lease agreement relating to a stand or stall in a vending site shall be transferred from the person to whom it was issued to any other person – (s 5 (7)).

The Bulawayo By-Law seems more accommodating to transfer of licenses and permits than the Harare By-Law. It provides for non-transferability of licenses in people's markets but even then, transfer may be possible if council approval is secure. It does not seem to outright ban the right to transfer in relation to hawkers or vendors on other sites, although this may be an offence.

Whereas the Harare By-Law restricts the non-transferability of both the permit and the lease agreement with no provision of getting Council approval in appropriate circumstances. The flexibility of the Bulawayo By-Laws are consistent with the right to property of the workers in the informal economy. They also facilitate transfer in circumstances where this may be necessary for instance in cases of illness, temporary incapacitation or need to be away from work for whatever reasons including family, social, cultural or religious.

Harare SMEs Policy, 2023: The Policy still contains undue restrictions on the transfer and sale of licenses. It provides that any person found subletting "shall have her/his trading license and or lease terminated forthwith." (s 8.4.9).

Regional comparison: Cape Town and eThikwini Municipality

Cape Town City: By comparison the Cape Town By-Law allows permanent transfer to a dependant or assistant with the approval of the Council, until the expiry of the permit in cases of the death of the permit holder and if the loss of income generated by the informal trading would place the dependant under undue or severe economic hardship – (s 9.1)

Temporary transfer, with the written approval of the Council is allowed to a dependent or where there is no dependent to an individual nominated by the permit holder, where the permit holder is incapable of trading because of illness and there is proof from a medical practitioner that the permit -holder is unable to trade for the relevant period. Or absent "in order to fulfil religious or cultural duties" with further approval of Council required for absence beyond one month - s 9.2



eThikwini Municipality: Equally the eThikwini By-law provides in s 14 that a permit is non-transferable leased or otherwise disposed of except with the prior written consent of the Municipality. A permit "may, with the prior written approval of the Municipality, be temporarily or permanently transferred to a person nominated by a permit holder in writing and subject to the provision of any information which the Municipality may reasonably require from time to time."

(e) Suspensions and cancellations of licenses and permits

The By-Laws have provisions for the temporary withdrawal or suspension of licenses and permits as well as their cancellation. This is a very important power which may have a dramatic effect on the livelihoods of persons engaged in the informal economy. It potentially subverts the entire right to work and therefore impacts on their rights to life and human dignity.

Bulawayo By-Laws

The Bulawayo By-law provides various circumstances under which a trading license or permit may be suspended or cancelled.

- ▶ In cases of infectious disease. Under s 17 (2) of the By-Laws the Council shall temporarily withdraw a hawker's license or vendor's license or stall holder's license if the holder thereof is dealing in food and is found to be suffering from a contagious disease or infectious disease. The Council shall return to the licensee the temporarily withdrawn license if -
 - (a) he or she produces a Medical Certificate of Health issued after the date of withdrawal certifying that he or she is no longer suffering from a contagious and infectious disease.
 - **(b)** he or she applies to the council for his or her license to be restricted to the sale of goods other than food, and the license is accordingly endorsed.
 - **(c)** where a hawker, vendor or employee of hawker employer or vendor employer has been found to be suffering from a contagious and infectious disease and is engaged in the sale of food, and where the employer / principal has failed to comply with a written notice by the council cease employing that hawker, vendor, or stall holder in connection with the sale of food, and council cancels the license, council shall return the license where the licensee-
 - Produces a Medical Certificate of Health issued after the date of withdrawal certifying that the hawker or vendor concerned is no longer suffering from a contagious and infectious disease; or
 - He or she satisfies the council that they have terminated the engagement of, or discharged, the hawker or vendor concerned.
- ► The council may cancel a license if the holder at any time after the issue of the license or permit thereof -
 - has been convicted of any offence referred to as 16 (a), that is the applicant has failed to adhere to council by-laws and has been fined three consecutive times: or
 - does not maintain a satisfactory standard or cleanliness and public safety in respect of his or her person or servant of his or hers who is engaged or employed in the business.
 - does not maintain a satisfactory standard of cleanliness in respect of any food cart, container, stall, storage-premises, clothing, or equipment used by him or by any agent or servant of his in connection with the business; or
 - sells illegal items or goods, makes illegal fires.



City of Harare By-laws

Under the Harare By-Laws, 2014, the "Director of Housing and Community Services may cancel a permit or lease agreement if the holder is guilty of any contravention of the provisions of these by-laws" - s 14 (2). Further any permit or lease agreement so cancelled shall not be renewed until a period of one year has lapsed.

The provisions of the Harare By-Law are disproportionate and irrational:

- They are unreasonable and unfair per s 86 of the Constitution and not "justifiable in a democratic society based on openness, justice, human dignity, equality and freedom."
- ► The cancellation of a license for a trader means the removal of their right to work and affects their rights to life and human dignity. Restriction of such rights must be in limited circumstances. ²⁵ This was held by the Constitutional Court of South Africa in the case of South African Informal Traders Forum (SAITF) and others v City of Johannesburg and Others 2014 (4) SA 371 (CC); (SAITF) where the court held:



²⁵ SERI- SALGA, Informal Trade in South Africa: Legislation, Case Law and Recommendations for Local Government, (2018)



SAITF case study

... the ability of people to earn money and support themselves and their families is an important component of the right to human dignity. Without it [informal traders] faced 'humiliation and degradation'. Most traders, we were told, have dependants. Many of these dependants are children.

Equally the highest court in India held so in Olga Tellis & Ors 26

Olga Tellis & Ors case: v Bombay Municipal Council: 27

The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness, but it would make life impossible to live...

The courts have therefore held that where there are restrictions or provisions which take away the right to trade or work this must be for very narrowly define purposes such as to protect public health but cannot be used as a penalty for all and sundry violations of provisions of by-laws without taking into account the seriousness of the violations.

Where by-laws allow the cancellation of license or impoundment of goods for breach of provisions of by-laws without regards to the seriousness of the provisions breached, such by-laws would be unconstitutional. The means used to achieve the purpose is deemed disproportionate and unreasonable and that such purposes can be achieved with less restrictive measures than cancellation or denial of licenses or impoundment of goods.

▶ The same would also be in violation of the right to administrative justice provided under s 68 (1) of the Constitution stating that every person "has a right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair."

In the SAITF case, the decision not to renew Somali traders' licenses because they were foreigners and there were public perceptions that jobs and opportunities should be reserved for South Africans was held to be disproportionate and excessive.



Case Study: Makwickana v eThekwini Municipality

In the case of Makwickana v eThekwini Municipality 2015 (3) SA 165 (KZD) a 65-year-old informal trader for over 20 years had left his stall to attend an association meeting under an assistant. The assistant left the stall for less than an hour to attend lunch and when he came back his goods had been impounded by the police for violation of his traders permit that required that there be someone at the stall throughout. This was in terms of the eThekwini Municipality Informal Trading By-Law, 2014. The court held the provisions of the By-Law violated the constitutional right to trade because it was too restrictively framed and implemented. The provision gave municipal officials the power to impound informal traders' goods for any violation of the by-laws regardless of the seriousness of the violation. The by-laws "did not distinguish between the less serious, formal non-compliance like trading without producing proof of permit and the more serious offences that pose a threat to the public

Harare and Bulawayo by-laws violate the Constitution

Using the above cases, it becomes clear that the provisions of the Harare By-Laws, 2014 and the Bulawayo By-Laws, 2020 on cancellation of licenses are likely to be unconstitutional for various reasons:

- They allow cancellation of licenses and permits for all violations of the by-laws without regard to
 the seriousness of the violations. Even non-serious violations like trading without proof of permit
 can lead to cancellation. For misconduct the Bulawayo By-Laws are better crafted allowing
 cancellation after repeated offences and the offender has been fined at least three times.
- The by-laws do not make provision for notice of right to be heard before cancellation. This violates the right to procedural fairness under the right to administrative justice.
- The penalty of non-renewal of a permit for one year in the Harare By-Law is disproportionate and excessive.
- The Bulawayo By-Laws provision of "a satisfactory standard or cleanliness" of vendors, employees, equipment is vague and arbitrary and has racist origins in colonial perceptions of blacks as unclean. The South African by-laws do not contain such provision.



Regional comparison: City of Cape Town

By comparison the Cape Town By-Law s 8.6.6) provides for fairer circumstances for the suspension, revoking or cancellation of a permit, namely where the city.

- on reasonable prior notice to the informal trader; and,
- ▶ after affording the relevant informal trader an opportunity to make written representations, may revoke or suspend a permit in the event of an informal trader -
 - breaching any provisions of the permit and /or the By-Law or any other law.
 - being convicted of trading in illegal goods or providing a service unlawfully; or,
 - wilfully supplying incorrect information when required to provide the city with information.
 - being found to be unsuitable as contemplated in section 8.5.8, that is whether a suitable person whether by reason of his character having regard to any conviction recorded against him or his previous conduct for any reason.

Note that even then the decision of the court in Makwickana rendered the condition in the Cape Town By-Law of breach of any provision of the By-Law or any other law, disproportionate and therefore unconstitutional.

(e) Evictions, Impoundment and Seizures of Goods



Source:news.pindula.co.zw



One of the enforcement mechanisms provided for in virtually all by-laws is that of seizure and impoundment of goods of informal traders. In the song "Copyright" Winky D sings of how ruthless municipal police are in harassing and seizing the goods of poor traders. This is an area where again the by-laws come heavily short of the standards provided in the 2013 Constitution.

Seizure of goods under the Harare By-laws

The power of council to seize and dispose of goods under the Harare By-Laws is provided in sections 11 and 12.

Section 11 provides for the seizure of goods. It reads:

(1) An Environmental Health Officer or any authorized official may if he or she has reason to believe that a violation of section 5, 6, 7, 8, 9 or 10 of these by-laws has been committed seize or cause to be seized any goods so connected to the offence and remove or cause to be removed such seized goods to a secure compound and such goods shall be recorded in a records book and kept safe.

Provided that perishable goods shall be disposed of or destroyed after obtaining written authority from the Director of Housing and Community Services.

(2) "Any seized goods removed to a secure compound shall be released to the owner after payment of the prescribed penalty and storage charges set by resolution of Council...

The sections referred to above relate to>

- 5: applications for stand or stall in a vending site
- 6: cleanliness of the stand or stall in a vending site
- 7: health measures
- 8: goods that may be sold
- 9: designated officers in charge of people's markets
- 10: fees payable.

Disposal of goods: This is provided under s12 which provides for the disposal of unclaimed goods, namely:

- Council shall publish in a newspaper of wide circulation within the Council area a list of unclaimed goods and advise the owners to claim the goods within 30 days.
- Council shall sell by public auction any goods that remain unclaimed 30 days after the notice.
- Council shall deduct the charges from the proceeds of the sale and the balance shall be paid to the owner within 30 days from the date on which the owner submits a written request for such payment.
- Council shall operate a special account to deposit monies from the sale of unclaimed goods.
- Any money not claimed within 30 days after the sale of the unclaimed goods shall be forfeited to Council.

Bulawayo: The Bulawayo City By-Laws have short provisions on seizure, forfeiture, and disposal of the relevant provisions (s 26). This provides:



"26 Any goods that are the subject matter of an offence in the by-laws shall be handed to the Zimbabwe Republic Police for disposal."

(ii) Comments: By-laws on seizure of goods violate the Constitution

The provision of the Harare By-Law authorizing seizure of goods for non-compliance with both formal and less serious offences and serious ones is disproportionate, irrational and unfair and in violation of sections 86 and 68 of the Constitution as was held in **Makwickana v Ethekwini Municipality** 2015 (3) SA 165 (KZD) in that:

▶ **Disproportionate:** The court held the punishment disproportionate:

Impoundment is a necessary measure for absolute prohibition against street trading, that is, those that are a direct and immediate threat to the public. Not all contraventions of a by-law can validly result in impoundment ... Less serious, formal non-compliance such as trading without producing proof of a permit... [does] not pose a threat to the public.

▶ Irrational: The provisions are irrational and an arbitrary deprivation of property contrary to s 71 of the Constitution:

"Deprivation of ... property is so invasive of [street trader's] property rights that it impacts on the welfare of the street traders and their large families. For most the impounded goods are their only assets and means to a meal. Impoundment is therefore serious irrespective of the commercial value of the goods. Deprivation also impacts on their identity and dignity as people with property, however, little that is. On the facts of this case the deprivation was permanent, without notice and without compensation."²⁸

▶ Unfair discrimination against blacks: Blacks historically have been most affected adversely by the dual and enclave economy:

The Court held that 'apartheid layered poverty over race... the degree of coincidence or intersectionality of race with socio-economic status results in the greatest impact being on Africans....' Informal traders are forced to participate in informal trade "because of their socio-economic status or race or both are barriers to better opportunities'... For this reason, the impoundment of informal traders' goods for no good reason effectively compounds their historical disadvantage' and 'prevents them from trying to make a living.²⁹

Similar rulings have been made in relation to arbitrary evictions or demolitions from homes and workplaces. Section 74 of the Constitution provides that: "No person shall be evicted from their home, or to have their home demolished, without an order of court made after considering all the relevant circumstances."

²⁸ SALGA-SERI (2018) 30.

²⁹ SALGA-SERI (2018) 30.



Zuze v Trustees of Mlambo & Anor SC 69-19

The essential elements of the protection afforded by s 74 are twofold. The first is that no person may be evicted from his home or have his home demolished 'without an order of court'. This is a basic procedural requirement to ensure that the law is followed in conformity with due process. This was underscored in City of Harare v Mukunguretsi & Ors SC 46-18 at paragraphs 12 & 15, as a prerequisite to the lawful demolition of the respondents' homes

(iii) Legal Precedent: Thipe v City of Tshwane³⁰

The case involved traders who had worked at a station for 60 years were affected by the development of a R650 million mall by some developers working with the council. The traders were not consulted about the future of their businesses. To get them to move to a new city, they cut off electricity, water, and removed paving around trading areas. The informal traders with the help of a legal aid clinic applied to court for an interdict against their removal and for the city to reconnect water and electricity.

After some contestations eventually the parties reached an order by consent. This provides that during construction the informal traders could continue to trade in temporary trading areas made available to them including containers with communal sanitation, water, and electricity facilities. Commuter routes were rechannelled to go through the trading areas.

Once construction was finished to accommodate the interest of the traders, three trader representatives would sit on the "Dennebloem Facilities Management Board and that layout, design, location and allocation, criterion for trade will be developed in consultation with the traders with the ultimate aim of 'as far as possible' producing trading facilities 'comparable to the traders' current trade. ³¹

(f) Taxation and levies

Various types of taxes apply to the informal economy. Contrary to common perception, it is not true that entrepreneurs in the informal economy do not pay tax. In conducting their businesses. informal economy entrepreneurs pay various forms of taxes. These include the following:

Value Added Tax: Whenever they procure goods and services. This is levied in terms of the Value Added Tax Act [Chapter 23:12] and is set at 15% of the value of goods or services.

Customs and Excise Duty: Many informal economy entrepreneurs will also pay customs and excise duty under the Customs and Exercise Act [Chapter 23:02]. This is a duty levied on specified locally manufactured goods and on provision of specified services in Zimbabwe. It is also levied on the importation of the specified goods. The list of excisable goods includes wine made from grapes, beer and spirits, opaque beer, tobacco products, airtime and change of ownership on sale of used motor vehicles.

North Gauteng High Court Case Nos 7922/17 & 6048/17.

³¹ SALGA-SERI (2018)



Presumptive Tax

However, the category of tax that will affect most entrepreneurs in the informal economy is the presumptive tax payable in terms of the Income Tax Act [Chapter 23:06].

Businesses which sell to or provide services to a person or company that does not provide a current tax clearance certificate are required to affect a withholding tax on the purchaser. This was previously 10% but since 2022 has been increased to 30%. This has a disproportionate effect on the informal economy, most of whom are not income tax compliant.

Section 36C of the Income Tax Act provides for a presumptive tax to be charged, levied, and collected on the basis of the presumed income of persons engaged in trades, occupations and undertakings specified in the 26th Schedule to the Act.

The trades listed include informal traders, small scale miners, passenger vehicle operators, hairdressing saloon operators, cross-border traders and cottage industry operators.

There are different categories of presumptive taxes applicable to different sections of the informal economy, including the informal traders' presumptive tax, cottage industry operator's presumptive tax, hairdressing saloon operator's presumptive tax and the informal cross borders' presumptive tax.

▶ Informal Traders Presumptive Tax applies to informal traders and is provided in terms of Part II of the Schedule. It is paid at the same time as rent. The term "informal trader" includes a person who carries a trade for her / his own account from which they derive income of not less than US6000.00 annually and has not provided tax returns for the past year of assessment. It includes a hawker, a street vendor and a person who manufactures or processes any articles in or from residential premises.

Every informal trader who pays rent to a lessor in respect of residential accommodation, premises, or workstation such as a peoples' market or flea market shall notify that lessor of his/her status as an informal trader. The lessor is required to record the notification, together with the informal trader's name, address and such other particulars as may be prescribed and to send the written notification to the tax authority, ZIMRA. The term "lessor" is defined broadly to include any local authority from which the informal trader leases premises, a workstation, residential accommodation or the owner or person in charge of the place in which the informal trader works.

Whenever an informal trader pays the lessor rent in respect of the residential accommodation, premises or workstation, the lessor shall recover from him/her an additional amount by way of presumptive tax, equal to such percentage of the rent so paid as fixed from time to time in the charging Act. Excerpt that the lessor shall not recover any such amount where the informal trader produces to the lessor a valid tax clearance certificate in respect of the income received by or accruing to him/her from his/her trade. The lessor must pay the recovered amount within thirty days of the date on which they recovered it or within such further time as ZIMRA may for good cause allow.

Whenever a lessor has recovered any amount by way of presumptive tax, the lessor shall provide the informal trader with a certificate in the prescribed form showing, (a) the amount of rent paid by the informal trader; and (b) the amount of presumptive tax recovered from him/her. Further, ZIMRA shall, on production to it by an informal trader of the certificate furnish the informal trader with a tax clearance certificate in respect of the presumptive tax paid.

A lessor who, having been notified by an informal trader of his/her status and fails to recover the presumptive tax or fails to pay any such tax to ZIMRA shall be personally liable for the payment to ZIMRA, not later than the date on which the payment should have been made, and an additional penalty figure up to the amount which was due.



Failure to pay the presumptive tax can have dire consequences on the informal trader. Rent paid shall not constitute a valid payment under a lease unless the payment is accompanied by the applicable informal traders' presumptive tax. A failure or refusal on the part of an informal trader to pay the presumptive tax shall constitute a breach of a fundamental term of the lease concerned, entitling the lessor to terminate the lease without notice.

The other presumptive taxes are paid quarterly or importation of goods, as follows.

- **Cottage industry operator's presumptive tax** must be paid no later than 10 days after the end of each quarter, but ZIMRA can extend the period for good cause shown.
- **Hairdressing saloon operator's presumptive** tax shall be paid no later than 20 days after the end of each quarter, but ZIMRA can extend the period for good cause shown.
- Informal cross borders' presumptive tax is paid whenever a cross border trade imports any commercial goods in Zimbabwe and is a prescribed percentage of the value of the goods, unless she/he provides an appropriate tax clearance certificate or proof that she/he is a registered taxpayer in terms of the Income Tax Act.

(g) Empowerment and Development

The Constitution places a duty on the State at every level including local authorities to endeavour to and take adequate measures to empower all marginalized persons, groups, and communities, especially women and the youths. This includes the adoption of appropriate, fair and just affirmative action measures. See s 14, 17, 20 and 56 of the Constitution.

The same is also provided in various national policy documents including National Development Strategy - 1, National Gender Policy and National Policy for Persons Living with Disabilities.

Empowerment may involve various measures:

- the granting of licenses and permits.
- quotas for marginalized and vulnerable groups like women, youths, persons living with disabilities and the unemployed.
- loans and financial assistance.
- preferential procurement and tender policies.
- infrastructure development targeted at the informal economy and SMEs; and,
- vocational, entrepreneurial, and financial training and capacitation. see who are unemployed.

Until recently the legal and policy framework, including local authorities By-laws, were not aligned to the empowerment provisions of the Constitution or national policies.

This is different from major South African cities like Cape Town and eThekwini Municipality, as discussed above:

- ► The Cape Town City By-Law requires the city in granting trading permits to give preference to applicants that are historically disadvantaged individuals, to new applicants, to the unemployed and to applicants who do not share a household with an existing permit-holder.
- ► The eThekwini By-law, 2014 provides that the Municipality may, when granting trading permit, consider the need to give preference to applicants who:



- are black persons.
- are unemployed.
- are entering the informal sector for the first time.
- do not share a household with an existing permit-holder, unless the applicant is not a dependent on or financially reliant upon that permit-holder.
- are physically challenged.

City of Harare SMEs Policy, 2023

The new City of Harare Policy launched in June 2023 marks a radical and progressive departure from past policies. It recognises SMEs including the informal economy as a critical part of the economic and social fabric of the city that needs to be recognised, nurtured, and developed. It provides a number of important innovative empowerment measures, including:

- ▶ Allocations "of trading space within Council shall be inclusive to cater for all groups in the society including women, the youth, and people living with disability."
- ► Council to mainstream issues of gender, disability and disadvantaged groups in all initiatives pertaining to SME development. The Policy aims to empower vulnerable women traders and people with disabilities "to ensure recovery and resilience from socio-economic shocks, through effective participation in safe, inclusive, and violence-free markets.
- ▶ Markets and trading facilities shall be properly planned and regulated bearing in mind the economic needs of traders to match international best practices.
- Council shall consult its various stakeholders in the planning of SMEs. In this regard, Council shall take cognisant of the existence of various associations representing the SMEs sector to make use of the institutions for proper and inclusive planning.
- ► Council to work with government arms and relevant stakeholders to establish a framework of safeguards to ensure social protection for the interests of SMEs employees, including NSSA, whereby all SMEs registered by NSSA shall be required to comply with NSSA regulations.
- ► Council shall strive to harmonize all regulatory and compliance requirements to promote ease of doing business in the SMEs sector.
- ► Council shall create a Small to Medium Enterprise Fund to be used for SME infrastructure development, maintenance, and as a revolving fund for SME growth.
- ➤ Council shall establish an SME Revolving Fund to finance SME business activities. 70% of monies paid through SMEs business shall be retained for the development of SMEs of which 80% of these funds shall be deposited into the SME Fund.
- ➤ Council to put into place mechanisms to promote the transition of informal businesses to formal SMEs businesses. Council through its Vocational Training centres and relevant national government arms and agencies to equip SMEs business with relevant skills and capacities to grow and link them with industry bodies.
- ► Council to promote the Annual Exhibition of SMEs products as a broad marketing and transformation strategy for the sector.
- ▶ The above marks a massive advancement in the Policy framework of SMEs including the informal economy in the biggest and most important economic hub of the country. The announced Policy measures go even beyond those of the pioneering South African cities discussed above.



However, the challenge is going to be in actualization and enforcement of the Policy at various levels. Starting with the legal framework of the City of Harare By-laws, 2014, which will have to be completely overhauled to be consistent with the new Policy. Similarly, the Master Plans and Local Plans of the City will require appropriate adjustment. Further the procurement and tender policies of the City will require reform.

The above changes will not happen without the active involvement, mobilization by the associations of informal economy workers and businesses, in particular ZCIEA.

(i) Tenders and procurement policies

A major area of interest in the empowerment of the informal economy is that of tenders and procurement policies of Government and local authorities and how far these provide for the empowerment of marginalized and disadvantaged groups.

A stumbling block is that the main statute governing procurement and tenders, the Procurement Act [Chapter 22:14] has not been aligned to the empowerment and affirmative action provisions of the Constitution.

The provisions dealing with factors to be considered in tendering procedures in particular section 31 does not include grounds of empowerment and in fact compels that "all suppliers are treated fairly and impartially."

Previously provisions of the Indigenisation and Economic Empowerment Act [Chapter 14:33] provided strong provisions on empowerment. The Act required that at least fifty-one per cent of every public company and any other business shall be owned by indigenous Zimbabweans. It further provided that "all Government departments, statutory bodies and local authorities and all companies shall procure at least fifty per centum of their goods and services required to be procured in terms of the Procurement Act [Chapter 22:15] from businesses in which a controlling interest is held by indigenous Zimbabweans."

Amendments in 2018 to the Act repealed the above provisions. But these can provide useful precedents for measures to be adopted by local authorities, especially under the new City of Harare SMEs Policy, 2023.

Inspiration may also be drawn from regional examples. In South Africa reforms to procurement laws have been made to facilitate empowerment of marginalized groups. This includes the Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA) and the regulations published under it, the PPPFA Regulations, 2011. These instruments prescribe requirements regarding black economic empowerment (BEE) considerations for state tenders.

Group Activities for Module 4/Unit 3

In your existing groups, answer the following questions:

- 1. How have you been dealing with the enforcement through "seizure and impoundment" to ensure that you remain afloat in your informal economy businesses?
- 2. In your view, which bylaws have negatively affected the operations of the informal economy businesses in Zimbabwe to a greater extent?
- 3. Would you prefer to have universal bylaws that align to the Constitution and to the ILO Recommendation No. 204 and apply across all the informal economy in Zimbabwe rather than disintegrated bylaws that are region based and why?
- 4. Discuss how the informal economy can be effectively involved in the new developments such as that of the New City of Haraze SMEs Policy, 2023 to ensure that all the bylaws governing the informal economy in Zimbabwe align to the Constitution 2013 and the ILO Recommendation No. 204.



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MODULE 5:

DECENT WORK, LABOUR LAWS AND SOCIAL SECURITY IN THE INFORMAL ECONOMY

This Module has four Units:

- Unit 1: Decent work and labour rights in the informal economy
- Unit 2: Basic employment rights
- Unit 3: Freedom of association and effective collective bargaining
- Unit 4: Social security and social protection in the informal economy

Module 5/Unit 1.

Decent work and labour rights in the informal economy

This Unit covers the following topics:

- The ILO Decent work agenda
- Employment promotion and application of labour statutes
- Equal opportunity and treatment in employment
- Work that is prohibited: Slavery, forced labour and child labour.
- Case Studies: Child labour

(a) The ILO Decent work agenda



All workers, either in the formal or informal economies, are governed by fundamental labour rights.

Fundamental rights of workers are established under domestic laws as well as international labour laws.

Of importance are the fundamental rights at work set out in the ILO Declaration on Fundamental Principles and Rights at Work and the rights elaborated in the ILO Decent Work Agenda.

The rights set out in the ILO Declaration are globally recognized as representing the minimum social floor of rights at work which apply to all workers, including the informal economy.



These rights incorporate the core conventions of the ILO which bind every member of the ILO.

They are:

- Freedom of association and e Decent working time
- · Combining work, family, and personal life
- Work that should be abolished
- Stability and security of work
- Equal opportunity and treatment in employment
- Safe work environment
- Social security
- Social dialogue, employers' and workers' representation

Historically labour standards and rights have been focused on workers in the formal sector who are in a wage employment contractual relationship rather than workers in the informal economy.

In Zimbabwe, traditionally, the principal statute governing labour relationships is the Labour Act [Chapter 28:01]. The Act specifically applies only to employees and employers and thus leaves out most of those in the informal economy. ³⁴

There is now a global consensus that the principles of decent work and fundamental rights at work should apply to all parts of the economy, including the informal economy.

This was endorsed in the 2002 International Labour Conference Resolution on Decent Work and the Informal Economy. The same approach is reflected in the 2013 Constitution which has broadened the potential scope of coverage of protective labour standards in Zimbabwe. Section 65 (1) provides that every person is entitled to fair standards and practices.

There is a recognition, though, that the effective implementation of labour rights and the decent work agenda is most challenging in the informal economy where the most severe decent work deficits are to be found and work conditions are precarious and workers vulnerable.³⁵

³³ ILO Framework Work Indicators (2008).

³⁴ Section 3 (1) Labour Act [Chapter 28:01].



This arises from the multiple layers of disadvantages that affect the informal economy including:

- the vast diversity of the informal economy;
- that work is often in small or undefined workplaces;
- the grey or irregular legal status of many workers who exhibit characteristics of both the formal sector and informal economy or being workers and entrepreneurs;
- that many workers in the informal economy are not registered, regulated, or protected by labour legislation;
- lack of organising and collective bargaining platforms; and
- that workers in the informal economy have the most difficulty in accessing the legal system and judiciary to protect and enforce their rights.

To promote decent work in the informal economy there is a need for a balanced and integrated approach. An approach that seeks to address the severe decent work deficits in the informal economy, facilitate the integration of the informal economy into the mainstream economy whilst at the same time ensuring that opportunities for livelihood and entrepreneurship are not destroyed. ³⁶

Below we look at some of the fundamental rights at work and decent work agenda requirements and their application to the informal economy in Zimbabwe.

(b) Employment opportunities and application of labour statutes

The first pillar of the Decent Work agenda is that of employment promotion which includes productive work. A major part of realizing this objective is that of extending labour law statutes to as wide a section of workers as possible, including the informal economy.

The main statute that governs employment relationships in Zimbabwe is the Labour Act [Chapter 28:01]. The purpose of the Labour Act is to advance social justice and democracy in the workplace by, amongst others: ³⁷

- giving effect to the fundamental rights of employees provided under the Labour Act.
- providing a legal framework for effective collective bargaining between employees and employers for the improvement of conditions of employment.
- the promotion of fair labour standards.
- the promotion of the participation by employees in decisions affecting their interests in the workplace.
- securing the just, effective, and expeditious resolution of disputes and unfair labour practices.

The application and scope of the Labour Act is very broad. It is the main statute that governs labour matters in Zimbabwe. The Labour Act applies "...to all employers and employees except those whose conditions of employment are otherwise provided for in the Constitution." (s 3). Examples of excluded employees include public servants and members of the disciplined force of the State like soldiers and police officers.

The scope of the Labour Act is very wide to include many categories of workers in the informal economy. The definition of "employee" and "employer" under s 2 of the Labour Act is broad:

³⁵ ILO, The informal economy- enabling transition to formality OR ILO, Decent work and the informal economy

³⁷ Section 2A (1) Labour Act.



Employee means any person who performs work or services for another person for remuneration or reward on such terms and conditions as agreed upon by the parties or as provided for in this Act, and includes a person performing work or services for another person –

- (a) in circumstances where, even if the person performing the work or services supplies his own tools or works under flexible conditions of service, the hirer provides the substantial investments in or assumes the substantial risk of the undertaking; or
- **(b)** in any other circumstances that more closely resemble the relationship between an employee and employer than that between an independent contractor and hirer of services."

The above definition of "employee" uses the Economic Realities Test. This test goes beyond what the traditional tests used like that an employer was the one who had command and control of the worker, supplied the tools and equipment used by the worker as well as paid the worker a wage.

Such tests left out many categories of workers in the informal economy such as those in atypical forms of contract of employment such as vendors working exclusively for particular companies and are paid by commission instead of wages. Or homeworkers who work from their homes. These were called "independent contractors".

Legal Precedent: Southampton Assurance Co. of Zimbabwe case

Southampton Assurance Co. of Zimbabwe v. Mutual & Anor 1990 (1) ZLR 127

In this case the employer had dismissed the employees without approval of the Minister, arguing that they were contractors. The court weighed up factors that showed the persons to be in a contract of employment which included that they were given lists of customers by the company, provided with office space, were members of the company's medical aid scheme, were not allowed to work for another insurance company and worked under a hierarchy of managers. On the other hand, factors that demonstrated they were contractors were that they were described as contractors in the contracts, had flexible working hours and were paid by commission. The court ruled that the dominant impression was that they were independent contractors and thus not covered under the Labour Act.

The definition of employee under s 2 of the Labour Act is broad and covers many of such workers who would be treated as contractors. This is because it uses the Economic Realities Test to determine who is an employee.

This test is modelled on ILO conventions that apply to vulnerable workers such as home-workers and part-time workers. The test creates a primarily economic frame of reference with the worker's level of economic independence, share of the product of labour and actual control of the business, as the starting point, and not just secondary aspects such as the method of payment and provision of tools, equipment, or materials:

"... the crucial question of whose business it is ... or whether the party is carrying on the business in the sense of carrying it on for himself or on his behalf and not merely for a superior."

Employer: The definition of "employer" is broadly defined under s 2:

"Any person whatsoever who employs or provides work for another person and remunerates or expressly or tacitly undertakes to remunerate him, and include ... the manager, agent, or representative of such a person who is in charge or control of the work upon which such other person is employed."

³⁸ See Arts 1 and 4 Part – Time Work Convention, 1994 (C 175); Art 1 Home Work Convention, 1996 (C 177).



The broad application of the Labour Act to all employees including workers in the informal economy has been strengthened by s 65 (1) of the Constitution. This provides that - "Every person" has the right to fair labour practices and standards..."

(c) Equal opportunity and treatment in employment

A fundamental right is that of equal opportunity and treatment in employment. This right is provided as a basic human right under the Declaration of Rights of the Constitution and as a fundamental right of employees under Part II of the Labour Act.

The right is also found in international labour and human rights treaties that Zimbabwe has ratified including ILO conventions and general international human rights treaties.

Section 56 (1) of the Constitution provides that every person has the right to equality before the law, the right to equal protection and benefit of the law of all persons. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural, and social spheres. Section 65 (1) provides every person with the right to fair labour standards.

Taken together this means that employers, including those in the informal economy, should treat employees fairly. The right to fairness connotes objectiveness, rationality, and impartiality.

The Constitution provides for prohibited grounds of discrimination:

Prohibited grounds of discrimination – s 56 (3) Constitution

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

The Labour Act also prohibits unfair discrimination under s 5 (1):

Protection from unfair discrimination – s 5 Labour Act

No employer shall discriminate against any employee or prospective employee on grounds of race, tribe, place of origin, political opinion, colour, creed, gender, pregnancy, HIV/AIDS status or subject to the Disabled Persons Act [Chapter 17:01] any disability referred to in the definition of 'disabled person' in that Act...

The broad wording of the above provisions, for instance the use of the term "Every person", means the anti-discrimination provisions apply not only to traditional employees and employers, but also employees in the informal economy such as those in atypical contracts like home-workers, domestic workers, part-time workers, and contractors.

³⁹ Article 2 and Article 1, Discrimination (Employment and Occupation) Convention, 1958 (C 111); Article 2 Equal Remuneration Convention, 1951 (C 100).

⁴⁰ For instance, Article 2 African [Banjul] Charter; Article 2 Universal Declaration of Human Rights; Article 2 as read with Article 1 CEDAW; and Article 6 SADC Charter



The broad wording of the above provisions, for instance the use of the term "Every person", means the anti-discrimination provisions apply not only to traditional employees and employers, but also employees in the informal economy such as those in atypical contracts like home-workers, domestic workers, part-time workers, and contractors.

Discrimination is prohibited by employers, employment agencies and media. Discrimination is prohibited in all aspects relating to employment including:

- advertisement of employment and recruitment for employment
- the creation, classification or abolition of jobs or posts
- the determination or allocation of wages, pensions, accommodation, leave, benefits, or choice of persons for jobs, training, advancement, apprenticeships, transfer, promotion, or retrenchment
- the provision of facilities related to or connected with employment.
- any other matter related to employment.

Discrimination may exist in two forms, direct discrimination, and indirect discrimination. Both are prohibited.

Direct discrimination: This is open differentiation of employees, whereby the employer "simply treats some people less favourably than others because of their race, colour, religion, sex, or national origin..."

Examples are during colonialism of discrimination on the basis of gender and race. Under the Masters and Servants Act married women were not allowed to enter into contracts of employment without the consent of their husbands.

Under the 1923 Southern Rhodesia Constitution, all women, whether black or white, were not allowed to vote in national elections. Women were treated by the law as minors. Women were only able to vote in 1978. Women were first recognised as adults with full legal rights to enter contracts on their own in 1982 under the Legal Age of Majority Act, 1982. Under the Industrial Conciliation Act, 1934 which was the first law to provide for collective bargaining and rights of trade unions, the definition of "employee" did not include blacks, who were called natives.

Indirect discrimination: This occurs when an employer applies a practice or condition that on the face of it looks neutral, that is, it is applied equally to everybody, but in practice disproportionately affects members of disadvantaged groups in circumstances where it is not justifiable. In the case of Mike Campbell (Pvt) Ltd & Ors v Republic of Zimbabwe, The Supreme Court held that, "indirect discrimination occurs when a law, policy or programme does not appear to be discriminatory but has a discriminatory effect when implemented".



Examples of indirect discrimination

- Gender stereotypes. Such as women being taken as submissive. In one case an otherwise well-suited applicant for partnership was denied a partnership in an accounting firm because the partners said she used swearing language, was too aggressive, "macho" and "over-compensated for being a woman." To improve her chances of partnership the plaintiff was told to "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her styled, and wear jewellery."
- **Denial of benefits to part-time employees.** This has been held to be gender discrimination as women are disproportionately in this type of work, as has been age requirements targeting women of certain ages who might not be desired for instance because of greater costs related to maternity and pregnancy.
- **Pregnant women:** Making pregnant women undertake jobs or tasks that imperil their health or the unborn child, such as work at night or soon after giving births up to eight weeks, would amount to discrimination on the basis of pregnancy.
- **Toilets:** Providing unsanitary toilets to both men and women is unfair sex discrimination on women "because biology makes clean toilets more important to women."
- **Hairstyle:** In a matter involving the editor of the manual, denying a qualified lawyer the right to register as a legal practitioner because of his dreadlocks, was held to be discrimination on the basis of freedom of conscience and religion.⁴³

(i) Special measures and affirmative action

► The law allows for the adoption of reasonable special measures to promote equality and to protect people or classes of people who have been disadvantaged by unfair discrimination, even if this may on the face of it mean laws and policies that favour a specified group. Examples include:

Gender affirmative action:

- Provisions in the Constitution (sections 17, 24 and 14) providing for gender affirmative action to rectify gender discrimination and imbalances from past practices and policies, to achieve gender balance in all spheres of society including the economic and to remove all barriers to women from engaging in work and gainful economic activities.
- The Harare SMEs Policy 2023 provides for special measures to advance and empower women, persons with disabilities and disadvantaged groups including allocation of 10% of stalls to persons living with disabilities.
- ▶ Affirmative action measures: Gender, race and disability: Section (5) (7) (c) (d) of the Labour Act allows employers to implement any employment policy or practice on the grounds of race, gender and disability, "aimed at the advancement of persons who have been historically disadvantaged by discriminatory laws or practices" or "assisting disabled persons."
- ▶ Special measures: Article 5 (2) of the ILO Discrimination (Employment and Occupation) Convention, 1958 provides for the adoption of special measures for the protection or assistance of groups or persons who have been disadvantaged "for reasons such as sex, age, disablement, family responsibilities or social or cultural status."

⁴¹ 2008 (2) ZLR 343 (S).

⁴² Price Waterhouse v Hopkins 109 S. Ct. 1775 (1989). In Diaz v Pan American World Airways Inc. 442 F.2d 385 (1971) the court rejected an argument of employing women only because in "general (made) flights as pleasurable as possible."

⁴³ In re Chikweche 1995 (1) ZLR 235 (S).



Permissible defences: The law allows a few, restricted grounds of fair discrimination which can be raised as defences to allegations of unfair discrimination:

- that the discrimination "... is fair, reasonable and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom." Section 56(5) Constitution.
- Defences under the Labour Act (s 5 (7), including:
- special conditions for female employees on grounds of gender or pregnancy in accordance with any law.
- any employment policy or practice on the grounds of race, gender and disability, "aimed at the advancement of persons who have been historically disadvantaged by discriminatory laws or practices" or "assisting disabled persons".
- ▶ any distinction, exclusion, or preference in respect of a particular job which is based on the narrowly defined inherent operational requirements, needs and necessities of that particular job.

Where the defence is based on stereotypes, such as on the role or ability of women, it will not be accepted. Thus, the courts have rejected arguments discriminating against HIV persons because of stigmatisation, ⁴⁴ or against women in certain jobs because; they have to be done at night, are said to be too dangerous or too physically hard for women, women are not family breadwinners, or that women should not be too aggressive or that certain jobs require a feminine touch.

Note further that the defence will not prevail, if it can be shown that the employer can, but failed to reasonably accommodate the affected employee, by for instance reorganising job assignments. In one case the court rejected the defence by the employer that it could not employ a female applicant in a men-shop, because the job required taking the inside-leg measurements for men. The court found that this was on the rare occasion and in any case where it was necessary, one of seven male employees could be assigned to do it.

Remedies: The Labour Act [s 5 (4)] provides for several remedies for unlawful discrimination. These include criminal sanctions, orders to cease the unfair discrimination acts, damages, and order that a person be employed in the particular job even if someone had already been employed in that position.

(d) Prohibited work

(i) Introduction

Whilst a major objective of the decent work agenda is the promotion of work, there are certain types of work that are prohibited. Such types of work are deemed incompatible with the values of an open society based on values of equality and human dignity amongst others.

Two types of work that are prohibited including in the informal economy are forced labour, slavery and child labour.

(ii)Prohibition of slavery, servitude and forced or compulsory labour

The work relationship must be based on a voluntary agreement between the parties. A contract of employment derived from duress is invalid. Forced or compulsory labour and slavery are prohibited by law, locally and internationally. These include various forms of involuntary servitude, which is a condition of being coerced to labour against one's will. Such conditions include slavery whereby a person is owned as the property of another, or work forced by the use or threat of physical restraint or injury or harm or through law and generally forced or compulsory labour.

⁴⁴ Hoffman v SA Airways (2000) 21 ILJ 2357 (CC).

⁴⁵ Forced Labour Convention, 1930, (C29) and Abolition of Forced Labour Convention, 1957, (C105).

⁴⁶ Article 2, Forced Labour Convention, 1930



The Constitution prohibits all types of involuntary work. Section 54 provides that, "No person may be subjected to slavery or servitude." Section 55 provides that, "No person may be made to perform forced or compulsory labour." The Labour Act also provides that "no person shall be required to perform forced labour." Section 4A.

The law on forced and compulsory labour is drawn on ILO conventions that Zimbabwe has ratified.

The Convention Concerning Forced or Compulsory Labour, 1930 is one of eight ILO fundamental conventions which applies to all ILO members. Its object is to suppress the use of forced labour in all its forms irrespective of the nature of the work or the sector of activity in which it may be performed. It therefore applies to the informal economy.

Forced or compulsory labour is defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." ⁴⁶ The term, however, does not include certain types of involuntary work. Section 4A (2) of the Labour Act provides that the term "forced labour" does not include - any labour required as a result of a court sentence or order, labour from members of disciplined forces in pursuance of their duties, or labour by way of parental discipline or required under a state of a public emergency that threatens the life or well-being of the community. The Abolition of Forced Labour Convention (1957) supplemented the 1930 Convention principally to cancel a number of exceptions in the 1930 Convention, such as punishment for strikes and as a punishment for holding certain political views.

The Convention expresses that even when done under direction of a public authority the labour of the persons concerned shall not be hired to or placed at the disposal of private individuals, companies, or associations.

Violation of s 4A of the Labour Act attracts a criminal sanction of a fine not exceeding level seven or to imprisonment not exceeding two years or to both such fine and imprisonment.

(e) Prohibition of Child labour



Source: Newsscientist.com

⁴⁷ S.I. 72 of 1997.

⁴⁸ Such as the Minimum Age Convention, 1973 (C 138); Worst Forms of Child Labour Convention, 1999 (C 182); Convention on the Rights of the Child, 1989, and African Charter on the Rights and Welfare of the Child.



A prevalent feature of work in the informal economy is the use of child labour. The Preamble to the ILO Convention No 182 on the Worst Forms of Child Labour notes that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth, poverty alleviation and universal education.

Use of child labour is prohibited by the law. The main laws governing employment of children and young persons are provided under the Constitution, the Labour Act, the Labour Relations (Employment of Children and Young Persons) Regulations, 1997, 47 and the Children's Act [Chapter 5:06]. These should be read with the international treaties that Zimbabwe has ratified. 48

Generally, section 19 of the Constitution places an obligation on the State to take appropriate legislative and other measures—

- (a) to protect children from exploitative labour practices; and
- (b) to ensure that children are not required or permitted to perform work or provide services that—
- (i) are inappropriate for the children's age; or
- (ii) place at risk the children's well-being, education, physical or mental health or spiritual, moral or social development.

A "child" means a person under the age of sixteen years and a "young person" means any person who has attained the age of sixteen years but has not yet attained the age of eighteen years. ⁴⁹

The Labour Act sets the appropriate ages of employment of young persons and children. The minimum general age of employment is fifteen years. ⁵⁰ However, the Labour Act authorises the employment of children who are thirteen years or above as apprentices. Further a child who is thirteen years or more may perform light work where such work does not prejudice such child's education, health, safety, social or mental development. ⁵¹ This is consistent with ILO Minimum Age Convention which sets the general minimum age of employment at 15 years, 13 years for light work and the minimum age for hazardous work at 18 years.

Note that s 10A (1) of the Children's Act provides for a slightly higher period of 16 years for employment of "young persons". However, the age of 15 years under the Labour Act and S.I. 72 of 1997 takes precedence by virtue of s 2A (3) of the Act which stipulates that the Labour Act shall prevail over any other enactment inconsistent with it.

A contract for the employment of a child or young person shall not be valid unless it is entered into by or with the consent of the parent or guardian of the child or young person. ⁵²

There are restrictions on employment of children and young persons in relation to hours of work and hazardous work:

- No employer shall require a child or young person to work more than six hours in any one day or for a continuous period of three hours without a break of fifteen minutes or to work overtime.
- It is prohibited to employ any person under the age of 18 years to perform any work "which is likely to jeopardise that person's health, safety or morals" or such activities as may be prescribed.



- The Children's Act and S.I. 72 of 1997 prohibit the employment of children and young persons in hazardous labour. The prohibited work includes any work.
- Which is likely to jeopardise or interfere with the education of that child.
- Involving contact with any hazardous substance, article or process, including ionising radiation.
- Involving underground mining.
- That exposes a child or young person to electronically powered hand-tools, cutting or grinding blades.
- That exposes a child or young person to extreme heat, cold, noise or whole-body vibration.
- That is night work.
- That leads to the corruption, seduction of children including the prostitution of a child or
 young person. Further, there are particularly severe and exploitative forms of child labour
 which are prohibited under the Worst Forms of Child Labour Convention as read with s 19 of
 the Constitution. The Convention sets out the following as the worst forms of child labour that
 member states must seek to eradicate:
- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.
- The use, procuring or offering of a child for prostitution, to produce pornography or for pornographic performances.
- The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.
- Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children. In terms of consequences of violation of the children protection laws, there are both criminal and civil sanctions:
- Any contract made with a child below the age of employment and any contract of apprenticeship
 with an apprentice below the age of 15 but not lower than 13 years which was entered without
 the assistance of the apprentice's guardian, shall be "void and unenforceable against the person
 purportedly employed under such contract", but such persons may enforce any rights that have
 accrued to them because of such contract.
- An employer who violates this section is guilty of a criminal offence and may be liable to a fine
 not exceeding level seven or to imprisonment not exceeding two years or to both such fine and
 imprisonment.

⁴⁹ Section 2 Labour Relations (Employment of Children and Young Persons) Regulations, 1997 [S.I. 72 of 1997] as read with s 2, Children's Act.

⁵⁰ Section 11 (1) Labour Act and s 3(2) S.I. 72 of 1997

⁵¹ Section (4) S.I. 72 of 1997.

⁵² Section 5 (2), SI 72 of 1997.

⁵³ Section 4 of S.I. 72 OF 1997.

⁵⁴ Section 11 (4) Labour Act.



(f) Combating child labour in the informal economy

The 2008 edition of the ZCTU/ZCIEA Manual pointed out the following on combating child labour in the informal economy:

Informal sector employers take advantage of using children because of various reasons. Firstly, the employers need to be educated about child labour laws. They also need to be educated about the right of children to play, go to school, and develop naturally. Most of the children who are employed are not only abused, but they are under-paid. They take advantage of them because of their lack of knowledge. Children do not complain. There is a need for children to be taught their rights.

The major reason pushing children into the informal sector includes the current economy which has seen company closures, the effect of HIV and AIDS which has resulted in child headed families and the current decline in the education system. Children are forced to seek employment because of lack of food, clothing, and finances at an early age, some even go to the extent of becoming prostitutes and robbers just in order to fend for themselves and their families.

People in the informal sector and Government have a serious role to play to fight child labour. There is need to formulate sound policies to fight against child labour. It is everybody's duty including family members to assist in the social and cultural upbringing of children for the greater benefit of tomorrow.

CASE STUDIES:

The 2008 edition of the ZCTU / ZCIEA Manual provided several case studies of child labour in the informal economy:

a) Case of Child Labour -Earning a Living at 10 Years of Age

Tonderai Mature lives in Kwekwe with his mother and has two siblings. His father who was a gold panner (informal mining) died during a collapse of one of the informal mines just outside Kwekwe town.

Tonderai has had to stop going to school at the level of grade 4 so as to join the other gold panners to enable him to earn income for the family. At the time of the interview in 2004 Tonderai should have been in Grade Seven and preparing for high school. He confessed that all his dreams were shattered when his father died and he could not enjoy normal life like other children playing games and getting into mischief.

His routine involves waking up at 4 am to go to the mines and survey for gold; trade it and then buy household provisions. He says what is left for him is to find a wife and have his own family.

One wonders how a town full of gold fails to cushion its own children and create golden opportunities for them.



b) Case involving worst forms of child labour in prostitution

Marion Mandeu is approximately 15 years old, and we caught up with her in Beitbridge. She is one of the many girls caught up in commercial sex business and loiters around lodges and hotels in the border town of Beitbridge.

Marion's parents passed away in Mutare when she was a baby and the relatives who took care of her did not get her a birth certificate and so she could not write grade seven exams. She then worked as a maid where someone enticed her to join the job rush in South Africa. She was abandoned at the border as it became difficult to smuggle her into South Africa without proper documents. She was picked by a woman who inducted her in commercial sex work, which is her means of survival.

Altogether the Informal Economy Desk collected 10 cases from the different parts of the country in a bid to understand the intricacies of child labour and these revealed that family structures in Zimbabwe are much more loose which aggravates the insecurity of children. The foundation upon which the children are supposed to be socialized are severely distraught.

An interview with three local authorities' representatives revealed that nationwide children's services like recreational facilities, libraries and any other children's mind stimulation activities are fast collapsing. And there are no budgets to expand or set up new centres to cater for the population of Zimbabwe which is getting younger and younger. Furthermore, the fewer children's homes available are under pressure.

So much as the Child Labour Survey estimated that there are at least 1 million children who are victims and are outside any form of social protection or assistance.

c) Informal social welfare: Mutare case

The Mutare Informal Traders Association chaired by Philip Sanzvenga responded to the plight of two HIV orphans whose parents were members of the association engaged in vegetable vending at Sakubva Market. The norm would have been that children would drop out of school to continue with school as the association organised that they take turns to man their table in the mornings.

Consequently, the children have managed to pay for their education rates and levies to the local authorities and their trading license fee. The local authority on the other hand has no plans to extend survival to these children in respect of their rights. There are national and international conventions treaties and agreement, which form the backdrop upon child labour issues can be addressed in Zimbabwe.

(g) Recommendations

Participants contributing to the 2008 Manual made several recommendations to combat child labour:

- Workers in the Informal economy need awareness campaigns for combating child labour.
- Trainings are needed to educate informal economy employers and children on combating child labour.
- Committee to work with special cases need to be set up.
- Government policies on children need to be clear.



- Courts should be hard when punishing child abusers.
- Rape cases are rampant in the informal sector. There should be easy access to affordable accommodation for families.
- Retrenchments must not be easily approved.
- These children cannot afford medication due to the high expenses involved. Need for state funded universal public health care.
- Need for a universal and public funded education scheme to cover school fees and uniforms for all.

Group Activities for Module 5/Unit 1

In your existing groups, answer the following questions:

- 1. Discuss some of the provisions of the Labour Act of Zimbabwe that promote labour rights in the informal economy in Zimbabwe.
- 2. Discuss how the ILO Decent work agenda has been realised in the informal economy in Zimbabwe?
- 3. In your view, how can the informal economy sector in Zimbabwe be free from child labour?
- 4. In your view, how best can labour statutes be applied in the informal economy of Zimbabwe?



Module 5/Unit 2:

Basic Employment Rights

This Unit covers the following topics:

- Decent, fair and reasonable wages
- Decent working time
- Safe and healthy working environment
- Freedom from violence and harassment
- Case Study: Women, HIV/AIDS, and sexual harassment
- Stability and security of work

(a) Decent, fair and reasonable wage

An important indicator of the decent work agenda is that of adequate earnings and productive work. This is an important right because of the pervasive payment of low wages and under-payment of wages in the informal economy.

There is no requirement under the common law or the Labour Act for employers to pay workers an "adequate" wage or fair and reasonable wage.

The Constitution, however, does provide for a right to "a fair and reasonable wage." This is provided under s 65 (1), which provides:

"(1) Every person has the right to fair and safe labour practices and standards and to be paid a fair and reasonable wage." [emphasis added

The Constitution does not define the meaning of a "fair and reasonable wage". We must look at court cases and international law to assist us understand the meaning of the term. The principle is derived from international law instruments. ⁵⁵ The determination of "a fair and reasonable wage" involves the balancing of the different competing needs of workers, employers, and society at large. These include the human factor of employees needing to live a dignified poverty-free life, capacity of the employer to pay, prevailing economic environment factors like inflation, cost of living, comparable wages in industries with effective collective bargaining.

However, the first and foremost important factor is the human factor of a wage that ensures the employee a dignified life worth of a human being in a civilized society considering the prevailing economic conditions. The Poverty Datum Line (PDL) or breadbasket is generally recognized as the most scientific way of measuring poverty. In the case of Star Africa Corporation Ltd case BHUNU JA affirmed the duty to pay workers a decent wage that preserves their "human integrity (and) dignity." He held:



Meaning of a "fair wage" Star Africa Corporation Ltd v Zimbabwe Sugar Refinery Workers Union SC 65/21

"It appears that the appellant is labouring under a serious misapprehension that an employer who makes a loss cannot be ordered to pay its employees any increase in wages. The mere fact that an employer is operating at a loss is no license for it to pay slave wages not worthy of human dignity. We are of the considered view that an employer operating at a loss may still be ordered to pay a reasonable wage increase to its employees to avoid them falling into destitution and loss of human dignity...

An employer who cannot pay decent wages pertaining to the industry has no business continuing to operate subjecting its employees to slave wages..."

A decent wage has also been held to be a wage "sufficient to ensure the workman food, shelter, clothing, frugal comfort, provision for evil days, as well as reward for the special skill of an artisan if he is one..."

(i) Pay-slips and deductions from wages

The Labour Act [s 12A] provides some protection in relation to wages and remuneration, including:

- The particulars of the remuneration, benefits and bonuses be reduced into writing on commencement of employment.
- all remuneration should be accompanied by a written statement, a "pay slip", showing amongst others, the name of the employer and employee.
- the amount of remuneration and the period it relates to, the component of remuneration representing bonus or allowances, deductions made, and the net amount received.
- Remuneration shall be payable directly to the employee and remuneration in money shall not be paid by way of promissory notes, vouchers, or coupons but only in money which is legal tender.
- Remuneration may partly be payable in kind but not substitute entirely for remuneration in money and provided; no payment shall be made in the form of liquor or drugs, the value attributed to such payment shall be fair and reasonable, and such payment shall be appropriate for the personal use and benefit of the employee and their family.

⁵⁵ Such as Article 23(3) of the Universal Declaration of Human Rights, 1948 which provides that everyone has a right to just and favourable remuneration ensuring for him or her existence worthy of human dignity. See also, Minimum Wage Fixing Convention, 1970 (No. 131).

Labour Relations (Domestic Workers) Employment Regulations, 1992.

⁵⁷ See Art. 2, Hours of Work (Commerce and Offices) Convention, 1930 (C30).

⁵⁸ Lever Bros v Bimha & Ors S 85/04.



No deduction or set-off of any description shall be made from any remuneration except in the prescribed circumstances. The aggregate number of permissible deductions that may be made at any one time shall not exceed twenty-five per centum of the employee's gross remuneration for the period. The permitted circumstances for effecting deductions include:

- Where an employee is absent from work other than on public holidays or lawful leave.
- Where compelled by law or legal process such as for income and pension taxes or a court garnishee order.
- Where an advance has been paid to the employee, provided that deductions at any one time do not exceed 25 per centum of the worker's gross remuneration.
- By written stop order for contributions to insurance policies, pension funds, medical aid societies, building societies, burial societies and registered unions.
- For loans given by the employer to the employee and the employee has given his/her written consent for such deduction.
- For an amount recovered for payments made in error.
- Failure to pay an employee a wage which is provided under a registered collective bargaining agreement or employment regulation is an unfair labour practice and criminal offence, [s 6].
- Whenever an employment contract is terminated for whatever reason, including dismissal, resignation, retrenchment or death, the employer shall as soon as reasonably practicable after such termination, pay to the employee or her/his estate, the wages and benefits including vacation and pension benefits. Failure to do so is an unfair labour practice and criminal offence. [s 13].

(b) Decent working time

An important indicator of the decent work agenda is that of decent working time. Work in the informal economy is often characterised by long, indeterminate hours.

Labour statutes have provisions governing working time, many of which apply to workers in the informal economy. Municipal By-laws and policies may also regulate working hours.

(i) Working hours in the informal economy

Statutes, council By-laws and policies may regulate the hours of work in given sectors of the informal economy.

Bulawayo: Under the Bulawayo City Council By-Laws, 2020 the council, in issuing or renewing a licence restricts the applicant to carry on the business for which the license is required to certain hours and days. [s 14 (1) (c)].

City of Harare SMEs Policy 2023: The Policy provides – "All SMEs Business Traders working hours shall be determined by Council after engaging all relevant stakeholders" [s 15. ii] and shall be determined sector by sector.

The Policy further stipulates working hours for certain trades:

- Farmers Market (Wholesale Market): Farmers Markets shall operate from 0300 hrs in the morning and close at 1300 hrs in the afternoon. Delivery of goods and services shall be from 1400 hrs in the afternoon to 0200 hrs in the morning of the following day. [s 15.5].
- Flea markets: Council owned flea markets shall operate from 6am to 6pm daily. [s 15.6].



(ii) Working hours for employees

The Labour Act has several provisions that regulate working hours. These apply to workers in the formal sector as well as workers in the informal economy.

Section 6 (1) (b) creates a duty on the employer not to "require an employee to work more than the maximum hours permitted by law or by agreement made under this Act for such employee." Hours of work may be set under a registered collective bargaining agreement for the industry, or employment regulations such as those governing domestic workers. ⁵⁶

The term "hours of work" refers to "the time during which the persons employed are at the disposal of the employer." It does not include rest periods during which persons employed are at the disposal of the employer." ⁵⁷

In one case the Supreme Court ruled that the term "hours of work" in a collective bargaining agreement did not include the thirty minutes break the workers were allowed per shift, even if they spent the time at the workplace. The workers could use it for their own purposes such as taking a nap, having refreshment or personal business, but they could not be paid overtime for it. 58

There are several provisions in the Act and other legislation which regulate working hours:

- Employees are entitled to at least twenty-four continuous hours of rest each week, either on the same day of every week or another agreed day. [s 60].⁵⁹
- Every employee shall be granted leave of absence during every public holiday. Where workers agree to work overtime on a public holiday, 59 wages usually are paid at double the worker's current hourly wage.60
- All employees are entitled to paid vacation leave at the rate of one twelfth of her/his qualifying service in each year of employment, i.e., thirty days. [s 14A].
- There is regulation of night-time work for certain categories of employees such as prohibition of night work for children and young persons.⁶¹
- No employer shall require a child or young person to work- more than six hours in any one day or for a continuous period of three hours without a break of at least fifteen minutes. No employer shall require a child or young person to work overtime. A child or young person shall be entitled to at least one and half days off each week, at least twenty-four hours of which shall be continuous.

Overtime is not compulsory unless provided for in the CBA or regulations, contract or it is a situation of an emergency, force majeure. In one case the Supreme Court reversed the dismissal of a cashier at a supermarket who was directed to continue working after her normal time to balance the books but was not to be paid for the extra time. She refused and was dismissed. The court held that such extra work was not a requirement in her contract, and neither was it an emergency. ⁶³

(c) Safe and healthy working environment

(i) General right to safety at work

A major element of the decent work agenda is the right of workers to a safe and healthy working environment. This covers a general right to safety at work and the more specific "right of everyone to a world of work free from violence and harassment" including gender-based violence and harassment which includes sexual harassment.



All employers, including in the informal economy, have a duty to ensure that they provide safe and healthy working conditions under the Constitution, statutes, and the common law:

- Section 65 (1) of the Constitution provides, inter alia, for the right of every person to "fair and safe labour practices and standards..."
- Section 6 (1) (d) of the Labour Act provides that no employer shall ... require any employee to work under any conditions or situations which are below those prescribed by law or by conventional practice of the occupation for the protection of such employee's health or safety.
- The National Social Security Authority (Accident Prevention) (Workers Compensation Scheme)

 Notice creates general duties on employers to ensure health and safety of employees and provides for compensation of employees injured at work.
- Under the common law an employer has a duty to ensure reasonable care for the safety of workers, including the provision of safe premises, machinery, and systems of work, taking into account the actual working conditions of the worker including the dulling of her senses through repetition, familiarity and exhaustion. a worker is under the duty to exercise due care, otherwise the employer's liability will be reduced to the extent of the worker's contributory negligence.

The most important ILO instrument is the Occupational Health and Safety Convention, 1981, No. 155 which sets out standards of workplace safety that apply globally.

An important aspect of the right to safety at the workplace is the right of employees to stop work that they reasonably believe poses an immediate and serious risk to their health, safety, or physical well-being. ⁶⁶

(ii) Select safety laws

Currently, there are various workplace safety laws that employers must comply with:

- Prohibition of work that is likely to jeopardise the health and safety of children and young persons
 including underground mining, night shift work, work that exposes a child to electrical cutting or
 grinding blades, work involving contact with any hazardous substances and any work that exposes a
 child to extremes of heat, cold, noise or whole-body vibration.
- Which provide for minimum requirements of factory sizes, ventilation, labelling and protective clothing.
- Prohibition of smoking in enclosed public places including workplaces.⁶⁸

⁵⁹ As gazetted under a notice in terms of the Public Holidays and Prohibition of Business Act, [Chapter 10:21].

⁶⁰ See for instance in relation to domestic workers, s 8 S.I. 377 of 1992.

⁶¹ Under s Children's Act [Chapter 5:06] and the Schedule to the Labour Relations (Employment of Children and Young Persons) Regulations, S.I. 72 of 1997. Under international law there is prohibition of requirements for women to at night unless they are in technical, managerial employees or in the health and welfare services. See, ILO Night Work Convention, 1990 (C171,)

⁶² Section 4 Labour Relations (Employment of Children and Young Persons) Regulations, S.I. 72 of 1997.

⁶³ Philemon v OK Bazaars SC 22/95.

⁶⁴ In terms of Article 4 (1) of the ILO Violence and Harassment Convention, No. 190 (2019).



- Prohibit discrimination on the grounds of AIDS / HIV and require protective clothing and other safety measures to prevent the spread of HIV / AIDS at the workplace.
- Public health laws on formidable epidemic diseases ⁷⁰ , including those concerning the
 prevention and containment of the spread of COVID-19. Some of the main provisions concerning
 COVID-19₇₁ at the workplace include:
- Employers and employees to comply with directions of an enforcement officer— to remain or
 return to work or close down premises during lockdowns unless an essential service; to submit
 to screening and testing for COVID-19; to observe the social distancing rule at the workplace; to
 wear protective masks; to sanitise hands; and to make available for use by employees and other
 persons hand sanitising liquid.
- Employers transport vehicles to ensure every person wears masks, sanitise hands and temperature checked; observe social distancing rules.
- Owners and employers close the workplace if employees test positive for COVID-19 or an
 employee is confirmed to have died or been hospitalised or isolated or quarantined because of it
 and disinfect the workplace and all furnishings in it before and after the opening of the premises
 for business.

(iii) Safety and health under By-Laws

Municipal By-laws and policies have various provisions designed to ensure safe and healthy workplaces.

- ▶ Medical certificates: Sellers of food must furnish in their application a valid Medical Certificate of Health. [s 7 (b) (iii)], Under the Harare By-laws a vendor of foodstuff "shall ensure he or she is in good health at all times and holds a valid medical examination certificate." [s 7 (3)].
- ➤ Safety restrictions: The council in issuing or renewing a licence may restrict the applicant in dealing in certain goods if in its opinion not to make such restriction would be undesirable in the interest of public health, public safety or create a fire hazard which could endanger life or property. [s 14 (1)], Bulawayo City Council By-laws.
- Council may refuse to issue or renew a licence or permit if the applicant is guilty of any offence which involves carelessness concerning or disregard for, cleanliness, hygiene, public health, sleeping at the site. [s 16 (1)]. Bulawayo City Council By-laws.
- No licence holder shall drop litter on the street or land surface and shall move their receptacles and goods on request by an official of the council to permit the official to clean the street. Shall remove all receptacles and goods from his/her stall at the end of the day and leave the place or stand in a clean condition. [s 20]. For Harare there is also a duty to keep a stand or stall and its immediate vicinity in a clean and hygienic state; and not to spit, urinate or defecate or drop litter in the immediate vicinity of the vending site. S s 6, 7 By-laws.]
- An Environmental Health Officer may at any reasonable time inspect any food cart, container, stall, clothing, equipment used by a holder of a licence in order to ascertain whether a clean and sanitary condition is being maintained and fire precautionary measures taken. [s 18 (1)].
- ▶ Site management committees shall have a duty to maintain cleanliness of sites and toilets every time. [s 28, Bulawayo By-Laws and s 19.4 and City of Harare SMEs Policy, 2023].
- ➤ Contagious and infectious disease: Council shall temporarily withdraw a vendor's licence if she or he is dealing in food and is found to be suffering from a contagious and infectious disease. That is any disease specified in or declared as such in terms of the Public Health Act [Chapter 15:17]. Council shall return, at no extra charge, the licence where the trader produces a Medical Certificate of Health certifying that she / he is no longer suffering from a contagious disease.



Infectious diseases – s 46 [CAP: 15:17]

- Chicken pox leprosy
- Diphtheria anthrax
- Erysipelas glanders
- Pyraemia and rabies Septicaemia yellow fever
- Scarlet fever cholera
- Typhus fever plague
- Sleeping sickness
- Viral haemorrhagic fever

(d) Freedom from Violence and Harassment at work



All persons have a right to protection from violence and harassment including freedom from gender-based violence and harassment or sexual harassment including at the workplace and in the informal economy.

Constitution: Has several applicable provisions:

• right to be treated humanely and with respect for their inherent human dignity [s 51].

These rights include the right of every person to freedom from violence and harassment including from gender-based violence, sexual harassment, and brutality by law enforcement agents.

⁶⁵ Notice No. 68 / 1990

 $^{^{66}~}$ See s 104 (4) Labour Act. As well as ILO Convention 155 and the SADC Charter



They apply to the informal economy as well as the formal sector. They apply across society including to customers, Government, and local authority institutions such as Customs and Immigration points, Police, and Local Authorities.

Violence and Harassment Convention, C190: The Convention provides important guidelines:

- It applies to all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas.
- Scope: It protects workers and other persons in the world of work, including employees, irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties, or responsibilities of an employer.
- Definition and scope of the right is broad. The following definitions apply.
- a) "Violence and harassment" in the world of work "refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment."
- **b)** "Gender-based violence and harassment" means violence and harassment directed at persons because of their sex or gender or affecting persons of a particular sex or gender disproportionately and includes sexual harassment.

(i) Municipal By-laws on freedom from violence/harassment

Municipal by-laws may contain provisions that protect the freedom from violence and harassment at the workplace in the informal economy:

Bulawayo City Council By- laws

- Fighting at the site is prohibited and the Council may refuse to issue or renew a licence or permit to persons engaged in such conduct. [s 16 (1) (e)].
- It is a criminal offence for any person to threaten or assault a council official or authorised person in the execution of their duties. [s 25].
- Site management committees have the duty to promote orderly trading and harmony daily at their sites. [s 28].

City of Harare:

- ▶ Authorised officials in charge of vending sites shall ensure "efficient, orderly... operation of the vending sites." [s 9, By-laws].
- ► Authorised officials have the power to require leaving the vending site and its immediate vicinity any person who
 - is under the influence of alcohol or drugs.
 - causes disturbance, nuisance or otherwise behaves in an offensive manner.



► The Harare SMEs Policy [s 8.2] provides:

- Council shall establish a mechanism for prevention and response to Gender based violence in all markets and SMEs businesses.
- Council shall establish a referral pathway for gender-based violence victims within the MSMEs sector.
- Council Municipal Police and State Agency shall enforce discipline and order in all markets and SMEs sector businesses.
- Sites Management Committees shall promote orderly trading and harmony at their sites. [s 19.4].
- Council shall develop safe markets:

Safe markets infrastructure - 9.2

- Council shall endeavour to develop safe markets to cater for women, children and persons living with disabilities.
- Council shall establish a safe market at each Ward.
- Council shall develop a Standard Operating Procedure for all Safe Markets Infrastructure.
- Council shall provide all necessary sanitary services at its safe markets.
- Council shall provide gender sensitive ablution facilities at its trading / vending sites.

(ii) Provisions under the Labour Act

The Labour Act provides for protection of employees from harassment at the workplace including sexual harassment and violence at work.

Sexual harassment: An employer or any other person commits an unfair labour practice, if by act or omission they demand from any employee or prospective employee any sexual favour concerning any matter related to employment, including various specified circumstances; or "engages in unwelcome sexually-determined behaviour towards any employee, whether verbal or otherwise, such as making physical contact or advances, sexually coloured remarks, or displaying pornographic materials in the workplace."

The scope of 'sexual harassment' the Labour Act is not gender specific. Thus, it covers various forms of gender-based harassment including gay, lesbian, or homosexual harassment. It covers not only 'acts' but also 'omissions.' This means an employer who fails to redress an environment of sexual harassment when it has come to its attention or one that a reasonable employer should have foreseen, is liable. The section covers both quid pro quo sexual harassment ('something for something') and hostile environment sexual harassment.

For quid pro quo harassment, an employer, manager, or other person commits an unfair labour practice of sexual harassment if they demand from any employee or prospective employee any sexual favour as a condition of any matter related to employment including

⁷² Section 8 (g) Labour Act.

⁷³ Section 8 (h) Labour Act.



- recruitment for employment.
- creation, classification or abolition of jobs or posts.
- remuneration or other conditions of employment.
- choice of persons for jobs, training, advancement, transfer, promotion or retrenchment.
- the provision of facilities related to or connected with employment.

Environmental sexual harassment occurs when an employer or its agent or any other person "engages in unwelcome sexually determined behaviour towards any employee, whether verbal or otherwise, such as making physical contact or advances, sexually coloured remarks, or displaying pornographic materials in the workplace." [s 8 (h)].

In one case, the Supreme Court upheld the dismissal of an employee who at an after-hours end of year company party, kept on making unwanted sexual advances to two female co-employees. ⁷⁴ The courts also have upheld the dismissal of a senior manager for sexual harassment of junior female employees. ⁷⁵

Violence and Harassment: The Labour Amendment Act, 2023 now provides every employee the right to protection from violence and harassment at work. [s 6 (3)]. It is modelled on the C190.

It provides that no person shall directly or indirectly act in a manner that amounts to violence and harassment towards another person at the workplace including any action in the course of, linked with or arising out of work -

- in the workplace, including public and private spaces where they are a place of work.
- in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities.
- during work-related trips, travel, training, events or social activities.
- through work-related communications, including those enabled by information and communication technologies.
- in employer-provided accommodation; and
- when commuting to and from work.

CASE STUDIES:

WOMEN IN THE INFORMAL ECONOMY AND HIV/AIDS AND SEXUAL HARASSMENT

The 2008 ZCTU/ZCIEA Manual provided several case studies on the situation of women in the informal economy and HIV/AIDS and sexual harassment in their work.

"HIV/AIDS has had a negative impact on the development of women in the informal sector simply because most of them are being infected and they end up leaving their jobs / businesses in the hands of someone else. This really reduces the participation of women towards economic development. There is a need for us to find out what really are the problems that end up putting women in difficult circumstances. Some women have said that when they travel across borders to go and sell their goods, some of their husbands end up indulging in immoral activities just to satisfy their sexual needs which is a bit unfair to their wives.

⁷⁴ Mudzingwa v One Stop Co- op SC 38/01.

⁷⁵ See, Lever Brothers v Maguchu 2000 (2) ZLR 187 (S) and Mwenye v Lonrho 1999 (2) ZLR 429 (S).



On the other hand, men would also want to argue that women bring the virus to the family since they travel long distances with other counterparts of the opposite sex, and one would not know / understand what would be transpiring. It has been figured out that some women use heavy duty trucks for their transport therefore in return the drivers would also need a favour in return i.e., the women have to have sexual relationships with the drivers. It has also been reported that when these women go to work outside the country, they are involved in other [social] activities such as going into bars and nightclubs. This shows that there is a lot of confusion as to who is responsible for the spread of the HIV virus.

A certain lady went to sell her products in South Africa but unfortunately, she was very unsuccessful, and she had no option except to go and work in a nightclub. She enjoyed herself to the extent that she forgot to go back home, the only time she remembered to go back home was the time that she fell ill, of course she came home but within a month she passed away. This shows that women in the informal sector are the most affected simply because of the poverty conditions that they live under.

It is never one's wish but circumstances one will be living under will force them into prostitution which is very disheartening in terms of one's health and upkeep. The conditions of work of women in the informal economy should be loosened in the sense that they should be free from sexual harassment or any form of harassment when they are doing their trading to and from across borders.

It has also been identified that men take advantage of these women in the informal sector, because it is only men who have those big vehicles, which can be able to help you cross the borders because one way the women have to abide by what the driver has to say. This is popularly known as (Botswana nepakati or Zambia nepakati). This will be implying that if I offer you in return, you should do me a favour.

The only solution that can work for women is to create an environment that protects women from such abuse so that they keep on working for their families without any difficulties. HIV/ AIDS is the biggest obstacle that is affecting women in the informal sector, and it is hindering economic progress. Women need to be educated to raise awareness on the impact of HIV & AIDS on their lives. "

(e) Stability and security of work

Every employee has the right to protection from unfair dismissal under s 12B(1) of the Labour Act. The right to security of employment has also been held to be an integral part of the right to fair labour standards and practices guaranteed under s 65 (1) of the Constitution.

Dismissal and termination of employment at the initiative of the employer is only considered "fair dismissal" if it complies with the requirements of substantive and procedural fairness. ⁷⁶

Substantive fairness means that an employer must provide a valid reason for the termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment, or service. 77

Thus, summary dismissal of an employee or dismissal on notice is unlawful and unfair. This means that the common law principle of the Notice Rule, that is the right of an employer to terminate a contract of employment on notice without giving reason or conducting an inquiry or hearing is not allowed, unless the employee was on a contract of fixed duration, that is a contract worker. ⁷⁸

⁷⁶ ILO Termination of Employment at the Initiative of the Employer Convention, 1982 (C158).

⁷⁷ Art. 4 C158.



In a notorious decision in 2015 the Supreme Court ruled that the common law principle still applied in Zimbabwe and allowed the dismissal of the two employees concerned on notice. The case led to the dismissal of tens of thousands of employees in a very short period of a few months. This led the Government to immediately amend the Labour Act with retrospective effect to prohibit the dismissal of employees on permanent contracts on notice. This was affirmed in the case of Greater Mans Stores case where the Constitutional Court held:

A system that allows an employer to just wake up on a bad day and decide for undisclosed reasons to terminate a contract of employment by notice ... to do so without regard to the need to compensate the employee for the loss of employment is fundamentally unfair.

Procedural fairness obliges the employer to carry out an inquiry or hearing which accords with the elementary principles of natural justice before dismissal of an employee. In cases of misconduct this means that the employee must be given an opportunity to defend themselves before an impartial and unbiased disciplinary authority. The worker must be given adequate notice of the hearing and the charges they are facing. The worker is entitled to be represented in such hearings by a lawyer or member of a workers committee, fellow employee, or trade union representative.

In cases of retrenchment, the employees are entitled to consultation on the proposed retrenchment and on the retrenchment package to be paid. Employees to be retrenched are entitled to negotiate the retrenchment package to be given and in any case to a minimum retrenchment package of not less than one month's salary or wages for every two years of service as an employee.

The Labour Act provides for some protection of the employment security of casual workers and contract workers, many of whom are found in the informal economy:

- A contract of employment that does not specify its duration or date of termination other than
 a contract for casual work, shall be deemed to be a permanent contract provided that a casual
 worker shall be deemed to have become a permanent worker on the day that her/his period
 of engagement with a particular employer exceeds a total of six weeks in any four consecutive
 months. 84
- A contract worker is deemed unfairly dismissed if the employer terminated the contract in circumstances where the employee had:
- i. had a legitimate expectation of being re-engaged. This may be so where the contract has been renewed on several occasions below or the employer had made assurances of renewal; and
- ii. if another person was employed in that same job instead of the contract worker. 85
- Contract workers who have been employed for a minimum period defined in a registered CBA or prescribed by the relevant National Employment Council for a particular industry or by the Minister of Labour are entitled to become permanent workers. 86

⁷⁸ Section 12 (4a) Labour Act.

⁷⁹ Nyamande and Anor v Zuva Petroleum (PVT) Ltd SC 43/15.

⁸⁰ Labour Amendment Act No. 5 of 2015 which provided for a new s 12 (4a).

⁸¹ Greatermans Stores (1979) (PVT) Ltd t/a Thomas Meikles Stores & Anor v The Minister of Public Service, Labour & Social Welfare & Anor CCZ 2/18.

⁸² Sable Chemical Industries Limited v Easterbrook SC 18/10; MMCZ v Mazvimavi 1995 (2) ZLR 353 (S).

⁸³ Section 12C (2) Labour Act.



Group Activities for Module 5/Unit 2

In your existing groups, answer the following questions:

- 1. Discuss how the basic employment rights have been promoted in the informal economy in Zimbabwe.
- 2. Discuss how the informal economy in Zimbabwe has benefitted from the application of basic employment rights in Zimbabwe.
- 3. How has the Harare SMEs policy enhanced the applicability of basic human rights in the informal economy in Zimbabwe?
- 4. Discuss how stability and security of work can be enhanced in the informal economy in Zimbabwe.







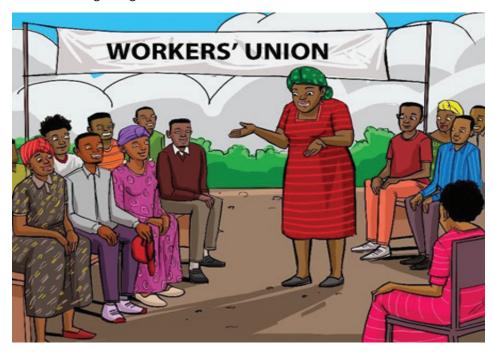


Module 5/Unit 3:

Freedom of Association and Rights to Organize and to Collective Bargaining

This Unit covers the following topics:

- Freedom of association and right to organise.
- Right to collective bargaining



(a) Freedom of association and right to organise

One of the basic employment rights recognised in the ILO Declaration of Fundamental Rights and the Decent Work Agenda is that of freedom of association and the related rights to organise and to effective collective bargaining.

⁸⁴ Section 12 (3) Labour Act.

⁸⁵ Section 12B (3) (b) Labour Act.

⁸⁶ Section 12 (3a) Labour Act.



- The rights are enshrined in the Constitution and Labour Act. Modified rights are found in municipal By-laws and policies.
- Freedom of association and the right to organise are rights covered in the eight core ILO conventions, namely, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (C87) and the Right to Organise and Collective Bargaining Convention, 1949 (C98).
- Zimbabwe has ratified both conventions. Some of the main elements of the freedom of association include:
- The right of workers and employers to establish organisations in full freedom or to join organizations of their own without prior authorization.
- The organizations' right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities.
- The right of organisations not to be liable to be dissolved or suspended by administrative authority.
- That the acquisition of legal personality by such organizations is not to be made subject to conditions of such character as to restrict the application of the above rights.
- Workers should enjoy adequate protection against acts of anti-union discrimination against acts calculated to make the employment of the worker subject to the condition that s/he shall not join the union or shall relinquish membership or to cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities.
- Organisations are to be protected from acts of interference by each other or each other's agents
 or members in their establishment, functioning or administration. Prohibited are those acts which
 are designed to promote the establishment of workers' organisations under the domination of
 employers or employers' organisations or to support workers' organisations by financial or other
 means with the object of placing such organisations under the control of employers or employers'
 organisations.

Constitution: The Constitution specifically enshrines the freedom of association and right to trade unionism consistent with the ILO conventions. Section 65 provides for the following:

- the right of every person, except members of the security services, to form and join trade unions and employee or employers' organisations of their choice and to participate in the lawful activities of those unions and organisations.
- the right of every employee, except members of the security services, to participate in collective job action, including the right to strike, sit in, withdraw their labour and to take other similar concerted action, but a law may restrict the exercise of this right in order to maintain essential services.
- except for members of the security services, the right of every employee, employer, trade union, and employee or employer's organisation to –
- engage in collective bargaining.
- organise; and
- form and join federations of such unions and organisations.

⁸⁷ Zimbabwe has also ratified the Workers Representatives Convention (No. 135) providing for the protection of workers representatives, including trade union officials.



Labour Act: The Act provides two rights associated with the freedom of association as fundamental rights of employees under Part II, namely.

- The right of every employee to membership of trade unions and workers committees and to participate in their lawful activities. [s 4].
- The workers' right to democracy in the workplace, including the right of reasonable access to trade union representatives to employees at the workplace during working hours for the purpose of advising the employees on law relating to their employment and ensuring that the rights and interests of the employees are protected and advanced. [s 7].

Registered trade unions enjoy several privileges under s 29 and other provisions of the Labour Act, including:

- the status of a body corporate capable of suing and being sued and owning property in its own name and contractual capacity.
- The employer is required to grant to employees who are officials or office-bearers of a registered trade union, reasonable paid or unpaid trade union leave "for the purpose of enabling the official or office bearer to perform the functions of his office."
- to make representations to a disciplinary determining authority or Labour Court.
- be represented in an employment council and engage in collective bargaining.
- have paid and unpaid union leave for its office bearers.
- recommend collective job action and authorize pickets.
- to levy, and sue for union dues, by check off or be an agent union.
- protection against acts of interference, especially by employers.
- enjoy authority over its members and workers committees, including rights to:
- approve works councils' collective agreements; 89
- approve strikes by a workers committee; 90
- suspend strikes of its members or a workers committee. 91

(i) Freedom of association in the informal economy

Generally, the statutes and municipal by-laws and policies have lagged behind in recognizing the freedom of association and right to organize of workers and entrepreneurs in the informal economy. The setting of by-laws, tariffs, penalties has been done unilaterally by councils without the participation and involvement of associations of the informal economy. IN fact, the By-laws and Acts do not provide a framework for the recognition of such associations.

However, changes have recently occurred which provide for the freedom of association and right to organize for the informal economy, although still limited. This is in the Bulawayo City Council (Hawkers and Vendors) By-laws, 2020, but most notably under the City of Harare SMEs Policy, 2023.

⁸⁸ See s 3 (2), Labour Relations (Protection Against Any Acts of Interference Between Workers' Organisation and Employers' Organisation) Regulations, S.I. 131 of 2003.

⁸⁹ Section 25 (1) Labour Act.

⁹⁰ Section 104 (3) (b) Labour Act.

⁹¹ Section 111 Labour Act.



Site Management Committees

The Bulawayo By-law provides for the establishment of Site Management Committees [s 28]. The purpose of the committees is to "do the organizational activities of getting the traders together to accomplish desired goals and objectives using available resources efficiently and effectively.: The desired goals and objectives being to —

- maintain cleanliness of sites and the toilets
- promote orderly trading and harmony daily at their sites.
- maintain a record of their membership daily.
- liaise with the Director of Housing and Community Services or his/her designate on any challenges faced by traders at their sites.
- ensure that their members are up to date with their rental and licences payment.

The City of Harare has followed suit and copied the Bulawayo City By-law provisions on site management committees in the City of Harare SMEs Policy 2023, [s 19]. It provides that the "role of Site Management Committee shall be to represent traders' interests and provide the link between City of Harare and Traders." The set goals and objectives are replicated from the Bulawayo ones with the additional one of the roles to prohibit "residency in/at any Markets, Home Industry, guarded car park or any related facility."

The concept of site management committees introduced in the Bulawayo City Council By-law and now replicated in Harare is a progressive one that recognises the right to organize at the local level. It is similar to the concept of a workers committee under the Labour Act for employees. What is required is to strengthen it in a similar manner to workers committees, including:

- protection of committee members from unfair victimization by Council officials.
- setting up of site management councils involving members of site management committees and relevant council officials and other stakeholders to facilitate the involvement of the informal economy representatives in decision-making and dispute resolution at their sites. This would be similar to works councils under the Labour Act.
- recognition of rights of associations in the committees in the same way as done for trade unions in workers committees under the Labour Act.

Freedom of association and right to organize under Harare SMEs Policy, 2023

The Harare SMEs Policy, 2023 has gone furthest in recognition of the freedom of association in the informal economy:

- It has adopted the concept of site management committees from the Bulawayo Council By-law.
- It provides that Council:
- "Shall take cognizance of the existence of various associations representing the SMEs sector to make use of the institutions for proper and inclusive planning." [s 7.1.7].
- "Shall consult its various stakeholders in the planning of SMEs." [s 7.1.7].
- All SMEs business traders working hours shall be determined by Council after engaging all relevant stakeholders. [s 15].



- "Strengthen the involvement of key stakeholders in creating an enabling environment for SMEs business to develop, grow and enhance its contribution to the national economy". [s 3.2].
- "Shall hold engagements meetings with SMEs stakeholders from time to time." [s 6 .3], and
- "Shall establish a database of SMEs Associations at various levels for various business sectors for improved interaction and coordination of the sector development." [s 6.4].

(b) Right to effective collective bargaining



Source:StreetNet International

The right to collective bargaining is an essential element of the right to organise. This is how workers are able to collectively protect and advance their interests.

The right is firmly established under the Constitution and Labour Act for employees in the formal sector. A modified right to consultation is available to informal economy associations in some municipal By-laws and policies.

Section 65 (5) of the Constitution provides for the right to organise and collective bargaining for every employee, workers committee and trade union. Section 65 (3) provides for the related right to strike, which is an essential aspect of effective collective bargaining.

Right to organise and collective bargaining – s65 (5)

"except for members of the security services, the right of every employee, employer, trade union, and employee or employer's organisation to engage in collective bargaining."



(i) Right to collective bargaining in the informal economy



Workers in the informal economy enjoy the rights of employees in the formal sector to organise and collective bargaining as provided in the Constitution and under the Labour Act.

Virtually all municipal By-laws do not currently provide for the right to collective bargaining or recognition of associations of the informal economy.

However, the City of Harare SMEs Policy, 2023 has signalled a radical departure from this and now provides for the recognition "of various associations representing the SMEs sector to make use of the institutions for proper and inclusive planning".

The City will establish a database of all SMEs associations operating in the City. The Council will also enter into Memorandum of Agreements for the Development of SME infrastructure with partners and stakeholders. [s .4].

On the ground many local authorities have entered into MOUs with associations of the informal economy. These include the following ones entered by ZCIEA and various local authorities.

MoUs by ZCIEA with local authorities

- Beitbridge
- Bulawayo
- Caledonia
- Chitungwiza
- Chivhu
- Gokwe North
- Gutu
- Gwanda
- Hwange
- Kariba
- Masvingo
- Nkayi
- Nyanga
- Plumtree
- Triangle
- Victoria Falls



The key task is to operationalise the principles and provisions set out in the City of Harare SMEs Policy and the various MoUs.

(ii) Collective bargaining under the Labour Act

The Labour Act provides the detailed framework of collective bargaining for employees and employers and their representative organisations.

The Act [s74 (2)] provides that "trade unions and employers organizations may negotiate collective bargaining agreements as to any conditions of employment which are of mutual interest to the parties."

A similar right to collective bargaining is provided for workers committees at the enterprise level. [s 24 (1)].

The Act creates a duty on the employer to bargain with the union or workers committee, unless one of the exceptions cited above exists. It is an unfair labour practice for an employer to fail to negotiate in good faith with a workers committee or appropriate union. 92

The Labour Act provides for a broad bargaining agenda which potentially may cover employees in segments of the informal economy such as employment security, working hours and wages for employees in atypical contracts. The Act provides that the parties may, subject to the Act, "negotiate collective bargaining agreements as to any conditions of employment which are of mutual interest to the parties thereto." ⁹³ This may include:

- rates of remuneration and minimum wages
- benefits for employees
- all issues pertaining to overtime, piece work and vacation leave.
- hours of work and the times of work
- the requirements of occupational safety
- procedures for dealing with disputes within an undertaking or industry.
- housing and transport facilities or in their absence, an allowance for the same
- measures to combat workplace violence and handling its aftermath.
- setting the period of continuous service after which contract workers are deemed permanent workers.⁹⁴

Section 8 (c) and 75 (2) Labour Act. In Olivine Industries (Pvt) Ltd v Olivine Workers Committee 2000 (2) ZLR 200 (S) it was held that the employer could not refuse to negotiate.

⁹³ Section 74 (2), (3) Labour Act. See also the Collective Bargaining Convention, 1951 (C154).

⁹⁴ Section 12 (3a) Labour Act.



The Act provides several instruments to ensure that the actual bargaining process itself is genuine and effective. These include the duty to bargain in absolute good faith; duty of financial disclosure; right to collective job action and enforcement through the unfair labour practice remedy and criminal sanctions.

The Act does not compel parties to reach agreement. All it requires them to do is to negotiate in absolute good faith. Where parties remain in disagreement after such a process, they are free to declare a deadlock.

Thereafter the parties may leave the matter as it is or agree to refer the dispute to arbitration. Alternatively, where the matter involves a dispute of interest such as an increase of wages and benefits, the trade union or workers committee have the right to embark on collective job action or to strike after fulfilling the necessary formalities like getting a certificate of no settlement, issuing a 14 days' notice, and conducting a secret ballot for majority approval of the strike. Parties may subsequently resume collective bargaining after such a test of one another's resolve or strength. The Constitution provides a firm right to go on collective job action for the employees, other than those who are in a prescribed essential service. ⁹⁵

A collective bargaining agreement that is registered and gazetted has the status of a Statutory Instrument. The CBA is "binding on the parties to the agreement, including all the members of such parties, and all employers, contractors and their respective employees in the undertaking or industry to which the agreement relates." ⁹⁶

This provision is of potential major benefit to casual employees, contract workers and other employees in atypical contracts who may fall under the informal economy. As long as they can demonstrate that they are "employees" they will be able to get the benefits provided under the CBA.

Group Activities for Module 5/Unit 3

In your existing groups, answer the following questions:

- 1. Discuss how the Freedom of Association and the Right to Collective bargaining has been derailed by the existing municipal by-laws in Zimbabwe.
- 2. Discuss how the Constitution of Zimbabwe 2013 and the labour laws have promoted the Freedom of Association and the Right to Collective Bargaining in the informal economy in Zimbabwe.
- 3. How has the City of Harare SMEs Policy 2023 advanced the Freedom of Association and the Right to collective bargaining in the informal economy in Zimbabwe?
- 4. In your opinion, how would the applicability of the New City of Harare SMEs Policy 2023 be better used to enhance the Freedom of Association and the Right to Collective Bargaining in the informal economy in Zimbabwe?

⁹⁵ Section 65 (3) Constitution.

⁹⁶ Section 82 (1) Labour Act.



Module 5/Unit 4:

Social Protection and Social Security in the Informal Economy

This Unit covers the following topics:

- Social security as a basic human right
- History of social protection frameworks in Zimbabwe
- Underlying principles of social security
- Legal framework: Maternity and pregnancy
- Old age, retirement, injury, illness, and death
- Framework concerning informal social security systems.
- Reforms and transition to universal coverage

(a) Social security a basic human right



Source:Techzim.co.zw



A basic human right recognised under Zimbabwean law and international law is the right to social security and social protection. ⁹⁷ The Constitution of Zimbabwe provides in s 30 that:⁹⁸

"The State must take all practical measures, within the limits of the resources available to it, to provide social security and social care to those who need it."

The right to social security is recognised under various international law instruments including the UDHR and ICESCR. ⁹⁹ Social security is an integral element of the Decent Work Agenda (DWA). Social protection is recognised as one of the means of realising several Sustainable Development Goals (SDGs), in particular SDG 1, ending poverty.

Social security: This is a broad, generic term that means - "the set of policies and programmes designed to reduce and prevent poverty and vulnerability across the life cycle."

It "covers all measures providing benefits, whether in cash or in kind, to secure protection, inter alia from:

- lack of work-related income (or insufficient income) caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member.
- lack of access or unaffordable access to healthcare.
- insufficient family support, particularly for children and adult dependants.
- general poverty and social exclusion." 100

An understanding of some basic terms is useful:

Statutory social security schemes: This refers to compulsory social insurance schemes such as under NSSA as well as tax-financed social protection schemes administered by national, provincial, or local authorities such as that of education assistance to school children, BEAM.

⁹⁷ Gwisai M et al, "An outline of fundamental labour rights under international laws, national constitutions and Zimbabwean constitutional norms," Kempton Makamure Labour Journal No. 2:2009, pg. 71, at pg 79.

⁹⁸ Art. 22 provides; "Everyone, as a member of society, has the right to social security." Art. 25 holds that everyone has the right to a standard of living adequate for the health and well-being of himself and his family and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance.

⁹⁹ ICESCR, Art 9 provides for "the right of everyone to social security insurance." At. 10 stipulates that "special protection should be accorded to mothers during a reasonable period before and after childbirth.

¹⁰⁰ ILO, Social Protection (Social Security) interventions: What works and why? Lessons learned from a synthesis review: 2012 - 2018, (ILO, Geneva, 2020).



▶ **Social protection:** This is similar to and sometimes used interchangeably with social security. However, social protection is broader and more inclusive than social security. It incorporates traditional social security measures like social insurance, social assistance and social welfare but goes beyond and includes non-statutory or private measures for providing social security including informal social security measures. The later are prevalent in the informal economy:

(b) A history of exclusion and fragmentation: A persisting legacy of social security "dualism"

Although the Constitution places a duty on the State for the progressive realisation of social security to all, the reality is that formal social security is available to only a small segment of society, namely those in the formal sector.

And even then, lowly paid, general and contract workers in the formal sector are excluded as are persons in the informal economy and rural sector. This is well over 90 per centum of the population. This includes most women, are marginalised, and excluded and have to rely on the under-developed and inadequate informal social security systems.

This marginalisation of the vast majority is a legacy of the "dual and enclave" economy and grafted capitalism that was introduced by colonialism and that has continued after independence. The details of this history were discussed in Module 1.

The "dual and enclave" economy shaped and conditioned the emergence and development of the social security system in Zimbabwe. It led to the existence of a fragmented, two-tier hierarchical social security system, consisting of a formal social security system and an informal social security system.

An exclusionary, hierarchical, and elitist social security system based on the race, class and gender marginalisation of blacks, ordinary workers, the informal economy, rural farmers, and women.

On the one hand, a developed, superior, and State supported and regulated formal social security system which catered for a minority of less than 10 per centum of the population. This was largely white and semi-skilled male blacks engaged in the formal, capitalist-proper section of the economy.

And an inferior, under-developed and State-unregulated informal social security system, catering for the vast majority in the rural areas including women, ordinary black workers, and the then small urban informal economy.

The informal social security system consisted of two types, the traditional social security system and the semi-formal social security system or non-kinship-based mutual support systems.

The traditional social security system was mainly rural and based on kinship or family ties and founded on indigenous, pre-capitalist customary law and social tradition. The semi-formal social security system was a member organisation-based system or non-kinship-based systems and mainly urban located. 101

The above dualist system served well the cheap labour needs of colonial capitalism in its primitive accumulation phase, loading the social security needs of black workers on the unpaid labour of black peasant women, who were the main providers of the traditional social security systems in the rural areas.

Modernisation Theory: The premises of colonial capitalism, manifest in the modernisation theory, was that with future economic growth and advancement of colonial capitalism, the majority of blacks would eventually be drawn from the rural subsistence sector into the formal capitalist sector where they too would be covered by the formal social security system. This would eventually lead to a single, integrated, universal state regulated formal social security system as the traditional social security system became supplanted by the modern capitalist formal social security system. Midgley summarises this well:



Colonial Modernization Theory

... economic growth in developing countries would rapidly transfer surplus labour from the subsistence sector of the economy into modern wage employment. Those in wage employment would qualify for social security and be afforded protection. As the economy continued to grow and more peasants transferred into the modern sector, protection would be extended, resulting, eventually, in universal coverage. The theory also posited that those who live and work in the rural subsistence sector are adequately protected by traditional forms of support... As the society experiences modernisation and the rest of the population gradually shifts into the modern sector, traditional obligations weaken, the family nucleates and loses its ability to provide care, and other indigenous forms of assistance gradually disappear. In this situation, the state social security system replaces the traditional system and provides universal coverage.



D. Kasente, Gender and social security reform in Africa; M Olivier and E Kaseke, Informal social security and formal social security: developing an integrative approach" (Paper prepared for the SADC Core Group of Social Security Specialists Regional Conference on "Social Security in the Making: Developments in the Informal Economy and Informal Social Security".

¹⁰² Midgley J "Social security in developing countries: Integrating state and traditional systems" (1994) 22/23 Focaal- European Journal of Anthropology 219 at 221.



The premises of the modernisation theory never materialised. Colonialism was defeated across the continent. Capitalism in the periphery has suffered the most from the recurring, growing and existential crises that have faced capitalism globally. In under-developed countries like Zimbabwe this has led to massive contraction of the formal economy, huge poverty, and explosion of the urban informal sector.

The dualism in the social security systems has therefore continued with the importance of the informal social security systems, intensified.

(c) Underlying principles to social security legal frameworks

To fully understand social security in Zimbabwe and in particular the possibility of universal coverage envisaged under the 2013 Constitution and R202, it is essential to look at both the formal social security system and the informal social security systems.

Looking at their impact on the informal economy and rural sector and the possibility of linkages of the systems and the transition to formalisation of the informal systems.

The instrument that has shaped and developed the principles and standards of formal social security systems internationally and in Zimbabwe is the Social Security (Minimum Standards) Convention, 1952 (No. 102).

The Convention defined the nine branches of contingencies or vulnerabilities that form the core of social security, establishing for each branch the minimum level of protection in terms of the population covered and the benefits guaranteed. The nine branches being: medical care; sickness benefit; unemployment benefit; old-age benefit; employment injury benefit; family benefit; maternity benefit; invalidity benefit; and survivor's benefit.

The definition and conceptualisation and definition of social security in the pioneering ILO framework was based on Convention No. 102 and was narrow, based on wage labour employment and taking social security as a response to income insecurity. The ILO defined social security as: 103

The protection which society provides for its members through a series of public measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings, resulting from sickness, maternity, employment injury, invalidity and death; the provision of medical care; and the provision of subsidies for families with children.

 $^{^{\}rm 103}$ ILO, 1984. Introduction to social security (3rd ed.) Geneva, pgs 2-3.



The earlier ILO definition had limitations because of its restricted scope covering mainly workers in full-time, regular wage employment, who were mainly male. It marginalised other forms of work and workers such as work in the informal economy, women, or subsistence farmers in the rural areas. 104

More recent developments in international social security law have sought to address some of the limitations of the earlier Convention, expressing the struggles and demands of the marginalized including the informal economy. Of particular importance is the Social Protection Floors Recommendation, 2012 (No. 202).

The Recommendation seeks to ensure a progressively wider scope and higher levels of social protection by establishing a basic level of social security to all in the form of a nationally defined framework of Social Protection Floors (SPFs) and a social security framework consistent with the Decent Work Agenda, including for the informal economy.

SPFs are defined in a broad and inclusive manner as "sets of basic social security guarantees which secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion."

They include in the least: basic income security for children, providing access to nutrition, education, care and other necessary goods and services; access to essential healthcare; maternity care and benefits; basic income security for those unable to earn sufficient income in cases of sickness, unemployment, maternity and disability; basic income security for older persons. disability pensions; support for those without jobs; old-age pensions and access to essential healthcare.

Applicable principles underlying SPFs in the Recommendation include:

Social Protection Floors – R202

- Recognising the overall and primary responsibility of the State in realising the goals of social security for all.
- Universality of protection, based on social solidarity.
- Adequacy and predictability of benefits.
- Non-discrimination, gender equality and responsiveness to special needs.
- Social inclusion, including persons in the informal economy.
- Respect for the rights and dignity of people covered by the social security quarantees.
- Progressive realisation, including by setting targets and time frames.
- High quality public services that enhance the delivery of social security systems.
- Efficiency and accessibility of complaint and appeal procedures.
- Regular monitoring of implementation and periodic evaluation.
- Full respect for collective bargaining and freedom of association for all workers
- Tripartite participation with representative organisations of employers and workers, as well as consultation with other relevant and representative organisations of persons concerned.

¹⁰⁴ D Kasente, n. 81 above.



Constitution: The conceptualisation to social security under the 2013 Constitution draws on the broader and inclusive approach represented in R202. This is seen in the broad wording of s 34 which places an obligation on the State to ensure the progressive realisation of "social security and social care to those who need it." Besides s 34 there are several provisions in the Constitution that relate to the right to social protection and social security:

Declaration of Rights:

- right of women employees to fully paid maternity leave
- right of every person to education
- the right to healthcare; and,
- right to food and water. 105

National Objectives: Various national objectives provided, including:

- duty on the State at all levels to ensure the realisation, within the resources available to it of the right to social security.
- food security
- protection of elderly persons
- protection of persons with disabilities
- protection of the family especially children; and,
- access to basic education, health services and social welfare. 106

As discussed earlier the major challenge remains the non-alignment of the statutes and laws on social security to the Constitution.

(d) Legal framework concerning formal social security systems

In Zimbabwe the principal laws governing social security and social protection are the Constitution and various statutes that provide for different aspects of social security.

City of Harare SMEs Policy, 2023. Municipal By-laws are largely silent on social protection for the informal economy, although they are the arm of government that has the most direct interface with the informal economy.

However, a major milestone has been set in the recently published City of Harare SMEs Policy of June 2023. The Policy has several significant features:

¹⁰⁵ Sections 65 (7), 75, 76 and 77 Constitution, respectively.

¹⁰⁶ Sections 15, 21, 22, 25, 27, 29 and 30 Constitution, respectively



City of Harare SMEs Policy, 2023: Social Protection – s 8.6

- Council shall engage government arms and all relevant stakeholders on establishment of framework to safeguard the interests of SME employees.
- The City of Harare shall work closely with NSSA and reputable insurance companies to offer social protection to SMEs.
- All SMEs registered by Council shall be required to comply with NSSA regulations.

Below we look at select areas which deal with loss of earnings due to disruption or stopping of work.

(e) Maternity and pregnancy

Maternity protection is a core element of the right to social security, which is well established under the Constitution, statutes as well as international human rights law, ¹⁰⁷ regional laws ¹⁰⁸ and ILO instruments. ¹⁰⁹

- ▶ CEDAW: This provides that in order prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States shall inter alia: prohibit dismissal on the grounds of pregnancy or of maternity leave; discrimination in dismissals on the basis of marital status; introduce maternity leave with pay or with comparable social benefits without loss of former employment or seniority; and provide special protection to women during pregnancy in types of work proved to be harmful to them.
- ▶ Constitution: Lays an important landmark foundation. Section 65 (7) provides:
 - (7) Women employees have a right to fully paid maternity leave for a period of at least three months.
- ▶ Labour Act: This provides details on maternity leave and benefits. Several highlights:
 - The right is accorded to all women employees, without any qualification whatsoever, including those in atypical forms of dependent work such as home-workers, casual workers, and domestic workers.
 - Paid maternity leave is available only to "employees." The definition of "employees" under the Labour Act 110 is broad enough to cover employees "in atypical forms of dependent work," 111 who are prevalent in the informal economy such as home-workers and part-time workers. However, the definition still leaves out the bulk of women in the informal economy who may be own-account workers and thus not "employees". There is a need for a broader definition that covers every person engaged in paid work, including the informal economy, just as done in s 65 (1) with fair labour standards.

Article 25 (2) Universal Declaration of Rights (UDHR) stating that "Motherhood and childhood are entitled to special care and assistance..."; article 10 (2) UN International Covenant on Economic, Social and Cultural Rights, providing that "Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits."

¹⁰⁸ Article 11 (a) of the SADC Charter compels Member States to create an enabling environment for the provision of, inter alia: "paid maternity leave;" Article 13 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 1995, compelling State parties to – "guarantee adequate and paid pre and post – natal maternity leave in both the private and public sectors."

The most important being the Maternity Protection Convention, 2000 (No. 183). This revised the earlier Maternity Protection Convention (Revised) 1952 (No. 103). See also Maternity Protection Recommendation, 2000 (No. 191). Other relevant instruments are: Part Time Work Convention, 1994 (No. 175); Home Work Convention, 1996 (No. 177); Workers with Family Responsibilities Convention, 1981 (No. 156); Discrimination (Employment and Occupation) Convention, 1951 (No. 90).



- Provides for a "fully paid maternity leave". However, making the individual employer liable to pay
 the wage can provide a basis for employers to discriminate against women of child-bearing age.
 Instead, payment should be done through a compulsory social insurance scheme or public funds
 as stipulated in the ILO conventions and done in countries like South Africa. 112
- The paid maternity leave is for a period of at least three months. The Labour Act provides for a period of at least 98 days of maternity leave.
- The employee must show proof of pregnancy by production of a medical certificate.
- The employee is entitled to other benefits related to maternity under the Labour Act:
- Protection from unfair dismissal due to exercise of maternity leave rights.
- On resumption of duty, the employee retains her grade, salary, and conditions of service applicable to her prior to her proceeding on maternity leave. The employee's normal benefits and entitlements including rights to seniority or advancement, accumulation of pension rights and continuous service shall not be considered broken by maternity leave.
- A breastfeeding mother is entitled under s 18 (8) to take off a one-hour period or two half-hour periods, which may be combined with other normal breaks, as she may choose, for nursing the child. But this must be done "in accordance with all the exigencies of her employment and nothing done to prevent any disruption of normal production processes or any interference with the efficient running of an undertaking or industry." The benefit is "for the period during which she actually nurses her child or six months, whichever is the lesser."
- Protection from harmful and dangerous work. International law provides for the right to special
 protection to women during pregnancy in types of work proved to be harmful to them or that
 pose significant risk to the health of the woman and child. A similar right may be inferred for
 pregnant women under the right to fair and safe labour standards and to just and satisfactory
 conditions of work under sections 65 (1) and (4) of the Constitution.
- In terms of enforcement several remedies are available:
 - Any employer or other person commits an unfair labour practice if by act or omission, she or he contravenes section 18 which provides for maternity protection. ¹¹³
 - A victim of unfair discrimination due to maternity reasons can claim damages from the employer for any loss caused directly or indirectly because of the contravention. Or an order to redress the contravention, including an order to employ any person notwithstanding that the vacancy in question has already been filled. [s 5 (4) (5)].
 - Contravention of section 5 is a criminal offence and the employer or person guilty of such offence is liable for a fine not exceeding level eight or to imprisonment for a period not exceeding two years or both. [s 5 (3).

Section 2 of the Labour Act defines "employee" as including persons who supply their own tools or have flexible working hours and where the hirer of services "provides the substantial investment in or assumes the substantial risk of the under-taking."

 $^{^{111}}$ Article 2, C 183; Article 1 C 177; and Article 2 C 175.

¹¹² Article 4 (4) C 103; Art. 6 (8) C 183. In SA the obligation to pay wages is on the state through a compulsory social insurance scheme, the Unemployment Insurance Act 63 of 2001, section 24.



(f) Old age, retirement, injury, illness or death

Several statutes apply providing for various aspects of social security. The main one is the National Social Security Authority Act ¹¹⁴ which provides for various compulsory social insurance schemes providing for benefits in cases of retirement, injury, illness or death.

(i) Old age and pensions

The NSSA (Pension and Other Benefits Scheme) Notice, S.I. 393 of 1993¹¹⁵ is a statutory compulsory social insurance scheme which is the principal social insurance covering the formal sector. It has the following features:

- It applies to "every person who is gainfully employed in Zimbabwe in any profession, trade or occupation, other than persons employed in the service of the State or as domestic workers in private households; ¹¹⁶ is a citizen of or ordinarily resident in Zimbabwe; and has attained the age of 16 years but has not attained the age of 65. All employers of employees who qualify are required to register.
- The employer and employee are each required to contribute on a monthly basis three percent of the employees' gross salary including any commission payable to any employee before any deductions are made, up to a maximum prescribed sum.
- On registration the employee is allocated a social security number, which shall remain applicable for the duration of the employee's working life regardless of changes of employers. NSSA is required to issue every employee registered with a social security identity card.
- All employees and employers have to make compulsory contributions to the scheme. The exceptions include domestic workers. The scheme covers a range of contingencies namely retirement, injury, illness or death.
- The scheme provides for pensions and grants. A pension is a regular payment, usually monthly given over a life cycle. A grant is a one-off lump sum payment.

The following benefits are payable under the Scheme:

- **Retirement pension:** This is paid to an employee who has reached retirement age, namely 55 years if s/he is an employee in arduous employment or 60 years for normal retirement or 65 years for late retirement; has retired from work; and has contributed to the Scheme for 10 or more years.
- **Retirement grant:** This is paid to an employee who has reached retirement age but has contributed for less than ten years.
- **Invalidity pension:** This is paid to an employee who becomes invalid after contributing to the Scheme for one or more years and:
- produces a medical certificate by a doctor confirming that the employee is permanently incapable of work and that such invalidity is due to disease, bodily or mental disablement resulting from non-work-related causes.

¹¹³ Sections 8 (b) and 18 (9) Labour Act.

^{114 [}Chapter 17:04].



has contributed for a period of up to twelve months; and, has not attained the age of 65 years and is not in retirement.

• **Invalidity grant:** This is paid to an employee who becomes invalid after contributing to the Scheme for more than six months but less than twelve months.

Like above the employee must show that s/he is permanently incapable of work and has not attained the age of 65 years and is not in retirement.

- **Survivor's pension:** This is a pension paid to the surviving spouse, children, or legal dependents of a deceased member. The pension is paid in relation to a deceased member who qualified or was in receipt of a retirement or invalidity pension or had contributed for a period of 10 years but had not reached retirement age. Survivors are entitled to varying pensions depending on their category. Children until 18 years, disabled children for life and spouses for life unless they remarry.
- **Survivor's grant:** This is paid to the surviving dependents of a deceased member as above, where at the time of her / his death the deceased employee would have been entitled to an invalidity grant or retirement grant. The survivor's grant shall not exceed the grant which would have been payable to the deceased employee.
- **Funeral grant:** A prescribed amount of a funeral grant is payable in respect of a deceased employee to cover the funeral expenses, provided that the employee contributed for a period of up to 12 months.

(ii) The Pension and Provident Fund Act

The Pension and Provident Fund Act ¹¹⁷ and Pensions and Provident Funds Regulations ,¹¹⁸ are the main instruments on voluntary social insurance covering the contingencies of old age and disability in the private sector. The following are the notable features:¹¹⁹

- Any association of persons including employers and workers, or a trade union are free to establish a fund or scheme the purpose of which is to pay benefits to persons or their dependants on the reaching of retirement or due to ill-health. The benefit received is called a pension.
- There are different types of such schemes including workplace based pension schemes, employment council schemes, trade union run schemes or insurance company schemes. This means co-operatives or other associations of the informal economy can establish such schemes.

There are different types of funds like:

- **Pension fund.** This is the typical and traditional pension scheme. It is defined as "any fund whose principal object of which is to provide for the payment of a pension to a person who is or has been a member of the fund on his retirement."
- Retirement annuity fund. This is defined as a "fund established by an association of persons or an insurer which (a) provides for the payment of a pension to a person who is or has been a member of the fund on his retirement; and (b) is operated either as an insurance company scheme or without payment of commission to any person for the introduction of business;" or
- Provident fund. This is defined as "a fund which is not a pension or a retirement annuity fund."

¹¹⁵ Established in terms of the National Social Security Authority Act, No. 12 of 1989.

¹¹⁶ s 2 S.I. 146A of 1994.

¹¹⁷ [Chapter 24:09].

¹¹⁸ SI 323 of 1991.

¹¹⁹ For details see, Gwisai M, Labour and Employment Law in Zimbabwe (2006), Cap 20, pg 397.



Every fund, whatever its form has to comply with the requirements of the Act and Regulations. It must be registered, which confers on it body corporate status. It must have registered Rules which comply with prescribed requirements including on: governance and election of trustees, half of whom should be elected by members; right of membership to every permanent employee below age of 55 years; compulsory contributions by all employees; refund for members who leave before the retirement age including a proportionate share of the employer's contribution; benefits including a life-time pension or to surviving spouses and children; a disability benefit including an early retirement pension or a disability monthly allowance in appropriate circumstances; and a retrenchment benefit in cases of retrenchment closure of the company, including an early retirement pension if 55 years or more or a proportionate share of the fund if younger.

Investigation and dissolution: There are a number of provisions in the Act to deal with situations where a fund is not being run properly. These include the powers of the Registrar to investigate and suspend funds and cancellation of registration and dissolution of the fund.

The NSSA Notice No 68 of 1990 is the principal compulsory social insurance covering employment injury and compensation in the private sector. It has its origins in colonialism, starting with the Workmen Compensation Ordinance No. 20 of 1922. ¹²⁰

The colonial Acts were modelled on emerging international labour standards established by the ILO.

They put in place a generalised and compulsory legislative system of occupational compensation. Employers were obliged to pay compensation to workers or their surviving dependents who were injured or killed at work, from accidents not arising out of their "own serious and wilful misconduct." The Acts applied only to white workers until 1960, when the definition of 'workman 'was amended to include black workers.

The colonial legislation was substituted after independence with the NSSA (Accident Prevention and Workers Compensation Scheme) Notice, 1990 but this retained intact the essential features of the framework set by the colonial statutes. The following are the notable features of Notice 68 of 1990.

- An employee who is injured in the course of her / his employment or falls sick from hazards arising out of the workplace, or their dependents in the event of death, has the right to claim for compensation from the Accident Prevention and Workers Compensation Scheme.
- The awards for compensation under the Scheme are funded by the Workers Compensation Insurance Fund (WCILF), to which all employers in Zimbabwe contribute levies, depending on the size of their workforce. The only exception being the government and employers of domestic workers in private individual households.
- The Scheme applies only to 'workers' and 'dependents. Certain categories of persons excluded:

¹²⁰ This was subsequently amended by Act No. 31 of 1925, Act No. 17 of 1930 and substituted as the Workmen's Compensation Act, No 19 of 1936.

¹²¹ Such as the Workmen Compensation (Agricultural) Convention, 1921 (C 12) and the Workmen Compensation (Accident) Convention, 1925 (C 17)



- The term 'worker' is defined as "any person who has entered into, or works under, a contract of employment or of apprenticeship or of learner ship with an employer, whether the contract is expressed or implied, is oral or in writing, and whether the remuneration is calculated by time or by work done or is in cash or in kind." The term "worker" does not include persons deemed to be employers, persons employed casually by an employer and not in connection with the employer's trade, out sourced workers or home-workers 123 public servants and domestic workers in private households. It has also been held that the term worker does include independent contractors. 124 The definition therefore largely excludes most of those engaged in the informal economy such as the self-employed, casual workers, home workers, contractors, and domestic workers.
- Ouster of common law remedies: The Notice expressly ousts the right of a worker or her / his dependent to institute action for damages at common law against the employer for disablement or death arising out of the course of employment.

Compensation is payable when the clamant fulfils the prescribed formalities and requirements. These are that:

- the person is a worker in a contract of employment.
- the disablement or death arose in the course of employment.
- there was a bona fide accident which caused the disablement or death; and
- the claim is made within the prescribed period and in accordance with the prescribed procedure.

Compensation payable. A variety of benefits are payable under the Scheme by the WCIF or in some instances by the employer. These are:

- Medical Expenses: Workers are entitled to refund for all reasonably and necessarily incurred expenses as a result of an accident in relation to medical treatment, medicines, supply or repair of dentures, spectacles, hearing aids, artificial limbs and crutches, travel, and subsistence costs to the place of treatment or examination as directed by the doctor. The amount is up to the prescribed amount unless the general manager orders an additional amount. If it is the employer that has incurred the expenses, the refund is made to the employer.
- **Provisional payment:** Employers are required to pay the worker 100 per centum of the worker's monthly wage up to the prescribed amount for the first 30 days following an accident, subject to future refund by the general manager.
- Periodical Payments: This is a sum paid to a worker who suffers temporary disablement or if permanent pending determination of the degree of her / his disablement, as compensation for loss of remuneration due to absence from work due to occupational accidents or hazards or as a refund to employers who continue to pay such absent workers. Payment is 100 per centum of the worker's monthly wage for the first 30 days paid by the employer as discussed above and thereafter payment will be on the scale equal to the aggregate of 80, 60 and 50 per centum of the prescribed amounts.

¹²² For details see, Gwisai M, Labour and Employment Law in Zimbabwe (2006), Cap 19, pg 377.

Defined as 'any person to whom articles or materials are given out by an employer to be made up, cleaned, washed, ornamented, finished or repaired or adapted for sale on premises not under the control of the employer.' – s 4 (3) (c)

¹²⁴ Workmen Compensation Scheme v Smit 1983 (2) SA 791



- **Compensation Pension:** Where there is permanent disability, which is where a worker' disability is over 30 per cent and whose monthly pension amount is above the prescribed sum, compensation will be paid to the worker as a pension per the prescribed formula.
- Lump Sum Payment: This is paid to a worker whose disability is not permanent, that is less than 30 per centum and whose monthly pension is less than the prescribed figure.
- **Funeral grant:** This is a grant paid to the family or persons who met the funeral expenses of a deceased worker or pensioner.
- Survivor's Pension and Children's Allowance: Where a worker dies the spouse is entitled a survivor's pension calculated at the rate of 2/3 of the worker's pension, and children receive a Children's allowance, up to 18 years or completion of education for life for disabled children.

The Labour Act: The Act has a number of provisions related to social security. These include:

Sick leave: Provisions for a paid sick leave to an employee who is prevented from attending to his/ her duties because he or she is ill or injured or undergoes medical treatment which has not been occasioned by his or her failure to take reasonable precautions. The benefit being ninety days sick leave on full pay during anyone-year period of service. And a further ninety days' sick leave on half pay, if the employee provides a certificate from a registered medical practitioner certifying that in the doctor's opinion it is probable that the employee will be able to resume duty after such further period of sick leave. 125

Provisions empowering the Minister to make regulations providing for social security, implementation of national and international standards in relation to safety, health and compensation for occupational disablement, special conditions applicable to female, juvenile and disabled employees including the restriction of the employment of juveniles and pregnant women in specified types and categories of employment or at specified hours, and the rights and privileges of mothers with suckling infants.

However, showing the heightened hostility of the State to the working class in the age of neoliberalism, no such Regulations have been promulgated except for those on the employment of children and young persons and domestic workers. ¹²⁶

(g) Framework concerning informal social security systems

The framework on the formal social security schemes outlined above shows a clear massive bias against the informal economy as well as certain inadequacies. Notables are:

- It retains the unequal dualist social security system inherited from the colonial era, with the formal system State supported and regulated and the informal system self-funded and unregulated.
- Discrimination and exclusion against the informal economy. The various legal instruments apply only to "employees." The term "employee" is narrowly and rigidly defined to exclude most of those in the informal economy like casual workers, contract workers, home workers, the self-employed or domestic workers.
- Even when applicable to sections of workers in the informal economy, most of these remain marginalised because of requirements of long or permanent service or continuous service. Further is restricted portability of benefits from one employer to another. Such conditions exclude or marginalise most workers in the informal economy who have atypical forms of employment such as casual workers, contract workers, home-workers, and part-time workers.

¹²⁵ Section 14 Labour Act.

¹²⁶ See respectively, the Labour Relations (Employment of Children and Young Persons) Regulations, 1997 and Labour Relations (Domestic Workers) Employment Regulations, 1992.



• The benefits granted under most of the schemes have failed to keep up with the acute economic crisis and inflation and currency volatility that has rocked Zimbabwe since about 2005. Hyper-inflation and currency changes have reduced pensions paid in Zimbabwe Dollars to paltry meaningless sums leaving most pensioners in destitution. The details of this were graphically revealed in the Smith Commission on the change over from Zimbabwe Dollars to US dollar pensions after 2009. Pensioners were estimated to have lost value in excess of USD 5 billion.

Marginalised and excluded, the informal economy has developed and relied on informal social security systems to address their social protection needs. Even workers covered by the formal systems have, in face of the pulverisation of pensions and grants by hyper-inflation and currency devaluation, have increasingly relied on these informal social security arrangements.

As to the meaning of the term, "informal social security system", Olivier and Kaseke provide a useful definition: 127

Definition: Informal social security system

Informal social security arrangements are those self-organised informal safety-nets which are based on membership of a particular social group or community, including but not limited to, family, kinship, age group, neighbourhood, profession, nationality, ethnic group and so forth.

There are two main forms of informal social security systems applicable in Zimbabwe and most of the SADC region. These are:

- traditional social security systems which are kinship, private household based; and,
- semi-formal social security systems or non-kinship, member organisation-based social security systems.

(i) Pillars and key features

The two authors point out that informal social security systems rest on anyone or any combination of four social security pillars:

4 Pillars of Informal Social Security Systems

- Individual provisions based on individual economic activities. For instance, self-employed as subsistence farmers or as casual workers in agriculture, or in informal off-farm jobs.
- Membership of traditional solidarity networks. These include family, kinship, neighbourhood, etc.
- Membership of co-operative or social welfare associations. These include self-help groups, rotating savings, and credit clubs (ROSCASs) such as mukando and cultural associations.
- Access to non-governmental public benefit systems. These include targeted transfers, donations, subsidised loans, and social services provided by voluntary organisations, NGOS, churches and trade unions.

¹²⁷ M Olivier and E Kaseke, n. 81, above.



Key features: Traditional social security systems are based on kinship and family ties. Notable features about them are:

- ➤ Solidarity and generalised reciprocity: They operate on the basis of principles of solidarity and generalised reciprocity.
 - Solidarity means that the entire extended family system rallies to assist an individual member exposed to a given risk such as death, illness, or one who is unable to look after their welfare.
 - Generalised reciprocity means that the systems are not based on individual contributions, but each
 member of the kinship group is required by social tradition and indigenous African customary law
 to assist a member in need of support even though there is no guarantee that the assisted member
 will be able to reciprocate.
- ► The basis of obligation arises from social tradition and indigenous African customary law. Consequently, such systems are strongest in the rural sector but extend their influence to the urban context especially in the informal economy and amongst ordinary black workers.
- ▶ Women play a dominant role in labour service in this system but given the patriarchal values that underlie this system women have little control and are minimum beneficiaries.

(ii) Reasons for decline of informal systems

Traditional social security systems are a declining social security system and play an even less important role in the urban areas for several reasons centred around the weakening of the traditional extended family, including:

- Growing urbanisation and westernisation especially in the post-colonial period when the colonial restrictions on freedom of movement were removed. Growth of apostolic and Pentecostal Christian churches have also weakened the hold of social tradition.
- Dispersion of the extended family across the nation and in the Diaspora accelerated by the growing crisis in Zimbabwe, initially after ESAP and then escalated economic crisis after 2000.
- Growing economic role of women in paid work, including in the informal economy. This has led to
 greater ability to resist the unequal, unpaid work in the family under patriarchy, including provision
 of social security.
- Widespread mass poverty in the wake of ESAP, economic meltdown including mass retrenchment
 which has weakened the capacity of the extended family to provide social protection. The AIDS/HIV
 pandemic has also contributed to this.

(iii) Semi-formal social security systems

Because of the above weakening of traditional social security systems, growing prominence has gone to the semi-formal social security systems, especially in the urban areas. Examples include ROSCAs, burial societies and informal economy - based social security arrangements

Notable features and benefits:

- They are formed in response to specific contingencies decided by the membership, such as assistance in deaths.
- They emerged as a response to the weakening of the traditional system and the exclusion and inadequacies of the formal social security systems. They may intervene in collective risks like floods and drought unlike the formal systems.



- They are based on the principles of solidarity and balanced solidarity. That is, they are based on contributions and there is a link between benefits and contributions, similar to the formal systems.
- Many self-organised mutual support systems have characteristics akin to formal bodies such as simple rules or constitutions, have leadership structures, hold regular meetings, and have a close link between benefits and contributions.
- They cover a wider range of contingencies than most formal systems. This includes both immediate needs like school fees, births, loans as well as future needs such death, old age.
- Women play an important role in many semi-formal systems and their needs and demands receive greater attention. This is because these systems allow women autonomy, flexibility, and control in a manner that the patriarchal-based systems do not.
- Some of the self-organised mutual support systems have significant linkages with the formal social security systems and formal institutions like banks. For instance, some burial societies have group policies with formal funeral insurance companies. Many bank their funds with formal institutions.

Whilst they play a critical role in the provision of social security to the majority of people in urban areas including in the informal economy scholars have highlighted that the semi-formal social security systems should not be romanticised and idealised. They are a survival response due to the marginalisation from the formal systems.

Notable weaknesses:

- Adequacy of benefits. Many participants operate on the margins of survival and contributions may be set at low levels which in turn results in low and inadequate benefits. This is compounded by the small sizes of many self-organised associations which results in lack of critical mass.
- Absence of State support. Unlike the formal systems which enjoy direct and indirect support from the State, informal systems lack any such subsidies and support from the State, weakening their effectiveness.
- Lack of corporate status. Many groups lack constitutions or registration and therefore lack
 corporate status unlike bodies in the formal systems like pension funds. This undermines the
 capacity of informal associations to raise funds, loans. This also makes it difficult to enforce in
 courts against defaulting members.
- Weak regulatory systems and technical capacity and long-term sustainability. The regulatory frameworks are weak and lose. Many associations lack written Rules and Constitutions which results in weak administration and governance structures. And escalates the risk of corruption and mismanagement. Lack of training affects capacity for risk management and effective investment of funds. The above leads to serious problems of long-term sustainability of many informal self-organised groups. These issues have assumed particular significance in the period of hyper-inflation and currency volatility that has rocked Zimbabwe since 2000. Reserves and funds have been rendered useless leading to the collapse of many self-organised groups.

(h) Reform and transition to a universal formal social security coverage

• The establishment and development of the laws and policies on social protection in Zimbabwe have been characterised by a dualist and unequal system in which the vast majority of the population has been excluded from the formal social security system and forced to inferior and inadequate informal systems. Such a position is no longer sustainable nor justifiable in view of the imperative under the 2013 Constitution of social security as a basic human right for all and the obligation of the State at all levels to see to the progressive realisation of this right.



This calls for an integrated, inclusive, and comprehensive national social security system. The same principles underlie most of the policies of the State aimed at eradication of poverty and ensuring that no-one is left behind. These include NDS-1, Vision 2030, and National Gender Policy. The same applies internationally in terms of the Decent Work Agenda and under Recommendation 202. Call for a universal and inclusive social security system.

As with the legal framework governing the business organisation and operations of the informal economy, the major challenge remains the non-alignment of the main statutes and laws on social security to the Constitution. Thus, reforms towards transition to a unitary, comprehensive formal social system of universal coverage must be a key element of the ongoing National Strategy of Transition to Formalisation of the Informal Economy. Important aspects to look at in that regards include: 128

- Focus must be on the semi-formal self-organised systems as these already share many similarities with the formal system including basic levels of organisation, broad coverage and being based on the system of pooling resources and balanced reciprocity.
- A consultative, inclusive approach that aims for the gradual absorption of the semi-formal systems into the formal systems. This may involve:
- strengthening the already existing linkages of the semi-formal systems to the formal systems and formal institutions like banks.
- targeted subsidies to enhance the financial base of informal security schemes.
- strengthening of the regulatory framework of informal groups to acquire corporate status and have basic democratic and accountable systems of governance. Use of the legal framework on cooperatives may be a good starting point.
- technical assistance in particular to help informal social security systems manage risk and investment.
- training to improve the managerial, paralegal skills and investment capabilities of informal social security groups. training to assist informal groups with basic skills in accounting, basic economics, and paralegal capabilities.
- A bottom to top approach that retains some of the key strengths demonstrated by informal social security systems such as the underlying principles of solidarity, autonomy and democracy, flexibility such as ability to address both immediate and future needs and critically, the strong participation of women.
- A radical overhaul of the definition and concept of "employee" and "employer" in laws and statutes governing the formal social security systems to encompass all forms of work including self-employment and atypical forms of work that dominate in the informal economy and rural sectors.
- Non-abdication or substitution for the State's primary responsibility to ensure realisation of the right to adequate social security protection for all that is provided under the Constitution and internationally.

¹²⁸ See generally m Olivier and E Kaseke, n. 81 above.



Group Activities for Module 5/Unit 4

In your existing groups, answer the following questions:

- 1. Discuss how social protection and social security have been realised in the informal economy in Zimbabwe.
- 2. Discuss some of the impediments to the realization of Social protection and Social Security in the informal economy in Zimbabwe.
- 3. How has the Constitution of Zimbabwe 2013 advanced social security and social protection in the informal economy in Zimbabwe?
- 4. How best can the informal economy in Zimbabwe apply the City of Harare SMEs Policy, 2023 in advancing Social Security and Social Protection in the informal economy in Zimbabwe?

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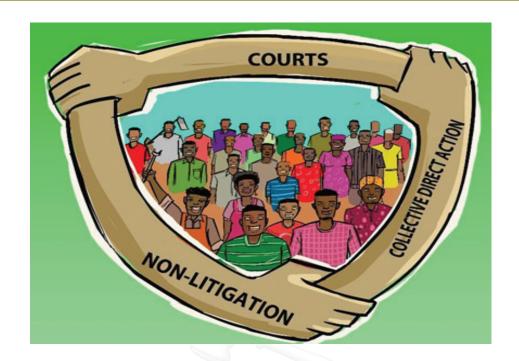






MODULE 6:

ENFORCEMENT, DEFENCE AND PROTECTION OF RIGHTS: ADVOCACY AND STRUGGLES FOR REFORMS



This Module covers the following:

- Unit 1: Enforcement and defense of rights through the courts
- Unit 2: Defense of rights through non-litigation and collective direct action
- Unit 3: An agenda for reforms

Module 6/Unit 1:

Enforcement and Protection of Rights through the Courts

This Unit covers the following topics:

- Role of law in defending rights and alternative methods
- Domestic Platforms and remedies
- Enforcement through Administrative Court and Labour Court
- Enforcement through the formal courts
- Administrative justice using the High Court
- Enforcement through criminal prosecution



(a) Role of law in defending rights and alternative methods

Two things are important in defence and enforcement of those rights when they are infringed:

- ▶ Firstly, understanding that there are different tiers of enforcement and dispute settlement machinery. These start from domestic platforms, to specialised courts to the form courts with civil and criminal jurisdiction.
- ▶ Secondly there are two broad camps on methods of enforcing and defending rights. That is on the one hand the formal dispute resolution platforms such as the courts and litigation. And on the other the non-formal dispute resolution camp based on the self-activity, collective mass actions of the ordinary people.

Sometimes effective results are achieved by a combination of methods from both camps. An example is strategic/impact litigation backed by media campaigns, mass petitions, marches, and protests.

(i) Utility and limitations of the law

In assessing the suitability and effectiveness of the two camps and their different methods, we must recall what we learnt in Module 2 on the role of law and courts in society.

That law and the courts are very important tools as they represent the highest form of rules in society which are mandatory and are enforced by the power of the State.

But they are also serious limitations, especially from a class, gender, and racial perspective. Courts and laws disproportionately favour and defend the interests of the wealthy classes and affluent middle-class elites, who historically have been white and male.

Marginalised are ordinary people like workers, villagers, the urban poor, and the small entrepreneurs in the informal economy. Historically these have largely been women, youths, and blacks.

These same elites dominate the various structures of the State including the courts, the police, army, the parastatals, Parliament, local authorities and colleges and universities, organised religion, the media, and the civic society NGOs. Collectively, we call this the ruling class, at the centre of which are the capitalists, who own and control most of the wealth and resources in society.

However, because of the struggles by ordinary people the law reflects important gains made by ordinary people. This includes the 2013 Constitution in terms of which important rights have been made including the right to work for the informal economy, to empowerment for marginalised groups like women, youths and persons living with disabilities.

But the rights won, can only become real and meaningful for ordinary people, including those in the informal economy, if they vigorously enforce them and defend them including in the formal dispute resolution platform including the courts.

Whilst most times they cannot do this as individuals because of lack of means, they have a better chance of doing so collectively through their different associations, organisations, and movements, sometimes with solidarity from progressive organisations and NGOs. Targeting those cases that have the highest possibility of impact and affecting the rights of the widest layers of ordinary people. This is called strategic or impact litigation and has been used effectively in many instances in Zimbabwe and across the Global South.

Below we look at a select sample of methods of enforcement and defence of rights drawn from the two camps.



Tier #1: Domestic Platforms and Remedies

(i) Domestic remedies regarding municipal by-laws

The authorities most intimately involved with the informal economy are the local authorities. These have by-laws that regulate the operations of the informal economy. They are licensing authorities under statutes providing for shop licenses and road transport. They are the local planning authorities under regional and local planning statutes. Various domestic remedies are available to enforce and defend rights.

A common matter is that of arbitrary denials of licenses, permits or cancellations of the same. The various by-laws have domestic or internal remedies that can be used to challenge arbitrary and unfair acts by council officials and departments:

- Where the action complained of has been done by a council official, one may file a complaint with the head of the department. Such officials include "designated officers", being persons in charge of people's markets, Environmental Health Officers or other "authorised persons", being any persons employed or delegated by council to carry out any function in terms of the by-laws. In big towns, matters involving licensing, work and site regulation and operations should be addressed to the Director of Housing and Community Services, or the equivalent in small local authorities. Complaints concerning public health issues including the actions of public health enforcement officials should be addressed to the Director of Health Services, or equivalent.
- The Bulawayo City Council (Hawkers and Vendors) By-Laws, 2020 provide that all trading sites
 must have a "management committee". 129 The City of Harare SMEs Policy now also establishes
 such site management committees. Filing grievances through these committees may prove more
 effective than as an individual.
- Beyond the heads of the Departments, especially with collective grievances affecting large numbers of people, one may also escalate the matter and file grievances with the administrative head of the local authority such as the Town Clerk.
- Additionally, if the above is still unsuccessful, grievances may be filed with political authorities such as the chairperson of the council committees on the informal economy, Chairperson of the Local Authority Board or Mayor, whichever is applicable. It is useful for paralegals and ZCIEA officials to keep full details of the various officials mentioned above including their full names, offices, phone and cell numbers and e-mail addresses.

(ii) Domestic remedies on impounding, seizure of goods and demolition of shelters

A major area of violations of rights is that around seizure, impounding and disposal of goods of the informal economy. As well as arbitrary demolitions and evictions of property, shelters and homes. The different by-laws and statutes provide the local authorities and police with power to impound, seize goods where there is violation of by-laws and to demolish unlawful structures. ¹³⁰

Section 28, Bulawayo City Council (Hawkers and Vendors) By-Laws, 2020.

¹³⁰ For instance, sections 11 and 12, Harare (Vendors) By-Laws, 2014; s 20, Victoria Falls Municipality (Hawkers and Street Vendors) By-Laws, 2013; s 26, Bulawayo City Council (Hawkers and Vendors)



We discussed in detail in Module 3 the principles governing this area, suffice to reiterate that council officials, police officers, authorised persons or any enforcement authority do not have a blank cheque to do as they wish. They are bound to ensure that their actions, conduct and decisions which "affect the rights, interests or legitimate expectations of others, are lawful, reasonable and fair." ¹³¹ Fairness requires that there is:

- adequate notice of the nature and purpose of the proposed action;
- a reasonable opportunity to make adequate representations; and
- adequate notice of any right of review or appeal where applicable.

The duty of administrative justice encompasses the doctrine of natural justice as enshrined in s 68 of the Constitution and codified in the Administrative Justice Act.¹³² The courts have emphasised that these rights mean that it is no longer business as usual for administrative authorities.¹³³

Further, the Constitution [s 74] protects every person from arbitrary eviction from their home, or having their home demolished, without an order of court made after considering all the relevant circumstances, and without alternative accommodation having been found for them.¹³⁴

(iii) Unlawful entry, search of persons and premises and seizure of goods



Another major violation of rights involves violation of the right to privacy by the national and municipal police including randomly carrying out raids in people's homes without any search warrants and confiscating people's property including goods for the informal economy, this is unlawful and in violation of the right to privacy under s 57 of the Constitution as read with the right to property under s 71.

¹³¹ By-Laws, 2020, and s 20 Epworth (Hawkers and Vendors) By - Laws, 2020. For demolition of properties the main statute is the Regional, Town and Country Planning Act [Chapter 29:12].

As was stated by Justice MATHONSI in the case of Nyathi & Ors v Lupane State University HB 104/18. [Chapter 10:28].

¹³³ See n. 3 above; and U-Tow Trailers (Pvt) Ltd v City of Harare and Another 2009 (2) ZLR 259 (H) 267 FG; 268 A-B.

 $^{^{134}}$ Zuze v Trustees of Mlambo & Anor SC 69-19, at p. 14; and City of Harare v Mukunguretsi & Ors SC 46-18 at paragraphs 12 & 15.



The right to privacy includes the right not to have -

- a. their home, premises or property entered without their permission.
- b. their person, home, premises, or property searched.
- c. their possessions seized.
- d. the privacy of their communications infringed.

The freedom from arbitrary entry and search means the police must ordinarily only search people's homes, premises, or property or search them or their property when they have a valid search warrant issued by a Magistrate or Judge of the High Court. Completely outside the powers that police are given to enter and search without a warrant. Only in exceptional circumstances can the police enter into people's homes or conduct searches or seize property without a warrant, as where there is a reasonable suspicion that there is stolen property and looking for a warrant would delay the search and the proper evidence will be destroyed.

In case of unlawful entry, search or seizure of goods, you may do the following:

Steps to take in cases of unlawful seizure of goods

- Show the Police that you know your rights by asking for a warrant of search.
- Confirm whether the warrant is issued by a person authorized to issue such a
 warrant, which is a Magistrate, Judge or Justice of the Peace, who is a senior
 police officer.
- Whether written notice was given of the intended action.
- Whether the affected persons were given an opportunity to make representations.
- If the police proceed to enter and search, file a complaint immediately with the Police Public Relations Department or Officer in Charge of the nearest police station.
- If able to do so file an urgent application with a Magistrate Court or High Court for an urgent order for the recovery of your property. This is called a spoliation order.

Case Study: Gweru case of impoundment of goods and harassment:

The implementation of the By-laws is a uniform problem in Zimbabwe as the informal workers are treated as outcasts and are not accorded their rights_ Like all other Cities, Gweru informal workers are constantly harassed by law enforcement agencies and Municipal Police.

Their goods are confiscated, and they are made to pay a fee which they are made to believe is a fee for using the selling points they are operating from. Infect it turns out that this is actually an admission of guilt. The following is a case study involving an informal worker from Gweru.



Tsitsi Rusere (Mrs) vs. Gweru Central Police (Officer CST Musunze: Incident

- 1. On the 17° of November 2007, Mercy Rusere & 31 others attended an Informal Economy workshop in Harare. The workshop ended on 18 November 2007.
- 2. On the 19' of November 2007, Police Officers in Gweru raided Kudzanai Bus Terminus where most vendors sell their wares. They impounded 2 x 25Kg rice and $\frac{3}{4}$ full bag of rice belonging to Mrs. Rusere.
- 3. The Police officers were identified as CST Musunze Gweru Central Police (Price Control Unit).
- 4. The impounded bags were taken to Gweru Central Police Station. No receipt or document of acknowledgement of goods confiscated was issued.
- 5. When Mrs Rusere returned from Harare on the 19th of November she was advised of this incident by her son, Abel Rusere, also a licensed vendor.
- 6. On the 20th of November 2007 at around 10am, Mrs. Rusere went to the Police Station demanding her goods and an explanation why the goods were confiscated.
- 7. Police Officer Musunze informed her that she is not allowed to sell rice, as it is prohibited under the Health Act. He then demanded to see her vending license. B. Mrs. Rusere produced photocopies of the license and the officer demanded to see the original copies.
- 8. Mrs. Rusere returned home and brought the original copies of the license.
- 9. When Police saw the original license, they advised her to return to the station at 2pm and threatened to detain her.
- 10. Mrs. Rusere returned at 2pm but failed to see CST Musunze. The goods were then not recovered

Comments

- While police officers claimed that it was illegal for Mrs. Rusere to sell rice, the City Council of Gweru Health department, which issues vending licenses, had authorized her to sell small grain.
 In such circumstances the police officers must be asked to identify the provisions of the laws they used to seize the goods.
- Once Mrs Rusere had shown her vending license, she was supposed to have the seized materials returned to her.
- Identify at least two remedies that were available to Mrs Rusere to defend her rights.

(iv) Domestic and specialized remedies in labour disputes and grievances

Employment codes: Where there is a dispute concerning labour matters such as non-payment of wages, under-payment of wages, discrimination, harassment including sexual harassment, one must check whether there is a registered employment code at the workplace or in the industry.

If there is, it will have a section dealing with grievances. One can seek the help of the workers committee members or trade union stewards to file a grievance with the relevant platform. Such matters eventually result in appeals to the highest company officials such as the General Manager or Managing Director and beyond that to the Labour Court.



Tier #2:

Enforcement through Administrative Court & Labour Court and specialized labour tribunals



The second tier is that which relates to enforcement and remedies before the specialised courts and tribunals.

The Administrative Court is the main platform for many matters involving local authorities and other authorities such as Ministers under specific statutes.

For labour disputes there are several remedies and enforcement mechanisms established under the Labour Act.

Source: JSC)

We look at some of these include the various specialised labour tribunals set up under the Labour Act. They include designated agents, labour officers and arbitrators with the apex being the Labour Court.

(v) Enforcement and remedies before the Administrative Court

Where one is not happy with the outcome of domestic remedies outlined above in relation to decisions and conduct of public authorities a further platform to enforce rights is before the Administrative Court.

The Administrative Court deals with cases of an administrative nature by public authorities. It mostly deals with appeals against decisions made by various public authorities both on questions of fact and law. It also has review jurisdiction over acts and conduct of public authorities, including those involving violations of the principles of administrative justice including natural justice. These principles are now codified and enshrined in s 68 of the Constitution and the Administrative Justice Act as discussed above.

The Court also has powers to grant review remedies over actions and conduct of public authorities. In some instances, the Court has original jurisdiction to deal with disputes as a court of first instance. The Administrative Court does not have jurisdiction in criminal matters.

Note that the High Court also has jurisdiction to hear matters concerning violation of the principles of administrative justice, although it normally defers to lower tribunals under the exhaustion of domestic remedies doctrine. ¹³⁵ So generally where statutes provide for a right of appeal or review to the Administrative Court, one should use that route and not go to the High Court.

(i) Jurisdiction of Administrative Court

Various pieces of legislation allocate jurisdiction and functions to the Administrative Court to hear appeals, applications for reviews or conferring it with jurisdiction to hear matters as a court of first instance (original jurisdiction). Some of the main ones include under the:

- Regional, Town and Country Planning Act [Chapter 29:12]: This gives the court various functions
 to resolve disputes between local planning authorities and any persons aggrieved by the former's
 proposed use of land or refusal to grant permits for development of land for certain purposes.
- Co-operative Societies Act [Chapter 24:05]: Gives court jurisdiction to hear appeals by persons aggrieved by a decision made by the Minister in terms of the Act. [s 116(2)].



- Liquor Act [Chapter 14:12]: Gives court jurisdiction to hear appeals from persons aggrieved by certain decisions of the Board or by the Minister in terms of the Act. [s 19].
- Shop Licenses Act [Chapter 14:17]: Gives court jurisdiction to hear appeals against decisions of the licensing authority. [s 39].
- Road Motor Transportation Act [Chapter 13:15] Gives court jurisdiction to hear appeals by persons aggrieved by decisions, directions, order and actions of the Commissioner in terms of the Act. [s 34].
- National Social Security Authority Act [Chapter 17:04]: Gives the court jurisdiction to hear appeals from persons aggrieved by decisions of the Board. [s 37].
- Procurement Act [Chapter 22:14]: Gives the court jurisdiction to hear appeals against decisions of the State Procurement Board. [s 43].
- Estate Agents Act [Chapter 27:05]: Gives court jurisdiction to hear appeals by persons aggrieved by certain decisions, directions, orders or actions of the Council. [s 31].
- Housing and Building Act [Chapter 22:07]: Gives the court jurisdiction to hear appeals over orders on rent for houses and commercial premises.
- Environmental Management Act [Chapter 20:27]: Gives court jurisdiction to hear appeals against decisions made on appeal to the Minister under the Act. [s 130(4)].
- Hazardous Substances and Articles Act [Chapter 15:05]: Gives the court has jurisdiction to hear
 appeals concerning decisions of the Board on licence applications and cancellation or variations of
 licenses. [s 27].
- Urban Councils Act [Chapter 29:15]. Provides for appeals, reviews and original jurisdiction in several instances:
- A President of the court sits as the President of the Valuation Board, which sits as a court of first instance. Its decisions are final and appeals to the Supreme Court only allowed on questions of law, [s 241(3)].

(ii) Procedure and Powers of Administrative Court

The procedures and powers of the Court are set out under the Administrative Court Act [Chapter 7:01] and applicable rules: 136

- Appeals must be filed within 30 days of the making of the decision being appealed against.
- The notice of appeal must be delivered to the presiding officer of the tribunal or body whose decision is being appealed against and all other persons affected by the decision of the body.
- The Notice must also be filed with the Registrar of the Administrative Court.
- The Notice must comply with the requirements set under the Rules. These include that: a) the name of the tribunal whose decision is appealed against; the date on which the decision was given; the grounds of appeal; the exact nature of the relief sought; and the address of the appellant or their legal representative.



Representation: There are broad representation rights. A party:

- may appear in person; or,
- be represented by— (i) a legal practitioner; or (ii) any person appointed in writing by such party; or,
- make written representations to the Court.

Powers: On review the court may set aside the decision appealed against, vary it, substitute its own decision or remit the matter back to the administrative authority concerned to address the matter complained of.

Appeals: Appeals against decisions of the Administrative Court lie to the Supreme Court.

(iii) Alternative Dispute Resolution under the Labour Act

There are remedies for labour disputes and unfair labour practices provided under the Labour Act. Disputes under the Act are divided into two, namely disputes of right and disputes of interest.

Disputes of right: Refer to disputes concerning violations of rights or entitlement under the Act and common law. Such include unfair dismissals, non-payment of wages, unfair discrimination.

Disputes of interest: These concern disputes relating to creation of new rights, such as wage increases. Unfair labour practices are those acts, omissions or conduct that are prohibited under the Labour Act.

Types of platforms for resolution of disputes

The Act provides various platforms for resolution of disputes. This will depend on what type of dispute is involved:

- **Conciliation:** The employee or former employee can refer their dispute or unfair labour practice to a labour office or Designated Agent of an Employment Council. That authority will try and reconcile the contesting parties and make them reach consensus.
- If they agree, the authority issues a certificate of settlement. This can be registered with a court for enforcement.
- However, the DA or Labour Officer may fail to dispose of the dispute and the parties remain in disagreement. If that happens, they issue a certificate of no settlement and refer the dispute to an arbitrator for adjudication.
- This procedure is easier to use for workers as they can be represented by a fellow worker, trade union, workers committee or paralegal.
- Determination/Adjudication: This involves the determination of a dispute by a third party vested with authority to make a binding decision, dependent on the parties' legal rights and obligations.
- When a dispute is referred to a DA, the parties can agree that instead of the DA doing conciliation, the DA hears the matter and decides disposing of the dispute.
- A party aggrieved by a determination of the DA has the right to appeal to the Labour Court or refer
 the matter to a labour officer.

¹³⁶ Administrative Court (Miscellaneous Appeals) Rules, 1980 (SI 122/1980).



- Representation in proceedings before Das is also broad and allows representation by paralegals and workers representatives.
- Arbitration: This involves a third party, who will try and get the disputing parties to reach a
 mutually agreeable decision. It is voluntary arbitration when the parties choose the arbitrators.
 Compulsory arbitration is when the arbitrator is appointed under the Labour Act by a labour
 officer.

Unlike conciliation the third party in arbitration, is ultimately vested with authority to make a decision disposing of the matter, just as in adjudication.

- When a dispute or unfair labour practice is referred to a labour officer, the parties can agree that instead of it going to conciliation it be referred to arbitration.
- Representation: Arbitration is quicker and results in a binding award. In arbitration proceedings a
 party is allowed to be represented by any person of their choice, including a fellow worker, para-,
 consultant or trade union representative.
- Appeals: A party aggrieved by the decision of an arbitrator can appeal to the Labour Court if it is compulsory arbitration. However, if it is voluntary arbitration there is no right of appeal. A party can only make an application to the High Court to set aside the award on the grounds that it violates public policy. For instance, if it was attained through corruption or fraud or involved a matter that is not capable of arbitration. , but only on a question of law.
- **Labour Court:** The court is the apex court under the Labour Act. It has several functions and powers:
- It hears appeals from decisions of DAS, arbitrators and disciplinary authorities under the Labour Act or any other enactment.
- It can review decisions of disciplinary authorities, DAs, labour officers and employers. Grounds on which decisions and proceedings may be reviewed include absence of jurisdiction, bias and gross technical irregularities.

Appeals to the Supreme Court are allowed only on questions of law.

- The Labour Court is a flexible court not bound by the strict procedures of the civil courts. Thus, trade union officials have the right to represent their members before the Labour Court.
- The Labour Court has power to grant extensive remedies including ordering back-pay, reinstatement, and cessation of unfair labour practices.
- **Collective Disputes Resolution mechanisms:** The Labour Act also provides other platforms for addressing disputes of a collective nature, namely collective job action and collective bargaining:

Tier #3: Enforcement through the formal courts

The third tier of enforcement of rights are the formal courts. When rights that are provided in any law have been violated, the aggrieved person has the right to approach the courts for redress, subject to the jurisdiction of the court and the formalities for approaching such courts.

The formal courts include Magistrate Courts, High Court, Supreme Court and Constitutional Court. The jurisdiction, powers of these courts were discussed in Module 2. The formal courts can offer powerful remedies against certain types of violations such as arbitrary evictions, impoundment of goods, refusals to grant permits or cancellation of the same. Some of these include:



- Interdicts: An interdict is a court order in terms of which a party is ordered to do something or not to do something. The remedy may be used as a final prohibitor interdict, which is one of permanent effect. Or an interlocutory order or temporary or interim relief pending final resolution of the dispute. For instance, prohibiting the removal of informal traders from a particular place pending resolution of a dispute on the lawfulness of their activities. For this remedy one must show three things:
- a) existence of a clear right to be protected.
- b) existence of a well-grounded apprehension of potential irreparable harm.
- c) absence of an alternative remedy
- Mandamus order: This is an order by the court ordering a person or body to perform
 a public or statutory duty. For instance, an action can be brought compelling the
 Minister of Local Government to do his /statutory duty of establishing Model By-Laws
 to be followed by local authorities in terms of s 230 of the Urban Council Act. Such
 Model By-laws must be aligned to the 2013 Constitution.

Declaratory order: A declaratory order is an order by the court stating what the position of the law is in relation to a concrete dispute between parties. It is not necessarily for execution or enforcement but may also have consequential relief. For instance, ZCIEA may make an application to have the provisions of the Harare By-Laws, 2014 authorising impounding or seizure of goods of traders without distinction as to the seriousness of the offences involved to be unconstitutional, violating the right to administrative justice, to property to and to work. This was done in the case of Makwickana v eThekwini Municipality ¹³⁷

- Spoliation order: also called the amendment van spolie: The purpose of this order is to prevent the wrongful deprivation of another's right of possession. The cause or reason for the possession is irrelevant. All the dispossessed person has to show is that:

 a) they were in "peaceful and undisturbed possession"; and b) they were "unlawfully deprived of that possession." At this stage the court is not concerned with whether the person dispossessing is the owner or whether the dispossessed person has any legal right to possession. The aim of a spoliation order is to prevent self-help or people taking the law into their own hands. A person who feels that their rights have been violated by another must approach the courts for relief and not resort to self-help. This can be a powerful remedy to counter acts like unlawful seizure of goods, or evictions by public authorities or the police.
- Setting aside of decisions of lower bodies: in matters before the appropriate court, including an appellate court like the High Court or Supreme Court, the decisions of concerned bodies or lower courts / tribunals may, if found to be unlawful, be set aside, and the court substitutes the same with an appropriate order to provide redress to the appellant. In cases of review, if the court makes a finding that the decisions or actions were done outside the enabling or parent statute the Court will set aside the decision as a nullity or in appropriate circumstances remit the matter to the lower court or body to hear the matter afresh, but in a procedurally correct manner.

¹³⁷ n.9 above.



Precedent Case Study: In the case of Zvimba Rural Traders Association v Zvimba Rural District Council and Anor HH 33/03. The applicant association sought an order setting aside increases in charges levied by the respondent council in terms of s 76 of the Rural District Councils Act. The council did not rebut the applicant's assertion that the proposed increases were not posted in the council area in accordance with s 76 (1) of the Act; that more than 50 objections were lodged which the council did not consider now was there any indication the council voted for the increases or that they were passed by a majority of the councillors. Further that councillors were not provided with copies of the objections before the meeting at which the increases were considered. The High Court held that the council's failure to adhere to the mandatory provisions of the Act rendered the increase void.

- Damages and compensation order: Where one is aggrieved by the unlawful conduct of another
 or by a public authority one may claim damages and compensation for loss due to the unlawful
 conduct.
- Constitutional violations orders: In circumstances where one establishes that the conduct, decisions, policies or by-laws, laws of any person including a public authority is in violation of the Constitution one may seek relief before the Constitutional Court. This may be through a direct application to the Constitutional Court if one is able to establish that the issue involves a constitutional question and that there are no effective remedies available in lower courts or tribunals. Alternatively, a constitutional violation may be raised before the High Court, but any order of constitutional invalidity will have to be confirmed by the Constitutional Court. If constitutional matters arise in lower courts like the Labour Court, the court can refer the matter to the Constitutional Court. A party may get relief of various form including:
- A declaration of rights or declaratory order stating one's rights under the Constitution.
- An award of nullity, setting aside the offending decision, policy, proceedings, or law.
- An award of compensation for loss caused due to the unconstitutional conduct.
- Damages for loss suffered.

(iv) Administrative Justice remedies from the High Court

The Administrative Justice Act provides particularly powerful relief against decisions, proceedings and conduct of public authorities such as local authorities, which violate the principles of administrative justice.

It places an administrative justice duty on all public authorities to "act lawfully, reasonably and in a fair manner."

These remedies are particularly useful against arbitrary, unilateral acts and decisions made by municipal authorities under By-Laws concerning issues like permits, licenses, impounding of goods, and demolition of properties and workstations. They are required to fully comply with the requirements of administrative justice as set out in the Act. Failure of which the Act provides powerful remedies for relief.

(v) Duties of administrative authorities

Under s 3 (1) an administrative authority which has the responsibility or power to take any administrative action which may affect the rights, interests or legitimate expectations of any person has a duty to



- (a) act lawfully, reasonably and in a fair manner; and
- **(b)** act within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to take the action by the person concerned; and
- (c) where it has taken the action, supply written reasons therefore within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to supply reasons by the person concerned.

In order for an administrative action to be done "in a fair manner", the administrative authority is required under s 3 (2), to give the person whose rights, interests or legitimate expectations may be affected-:

- adequate notice of the nature and purpose of the proposed action; and
- a reasonable opportunity to make adequate representations; and
- adequate notice of any right of review or appeal where applicable.

The term "administrative authority" is defined broadly and means: —

Definition of "Administrative authority"

- an officer, employee, member, committee, council, or board of the State or a local authority or parastatal; or
- a committee, or board appointed by or in terms of any enactment; or
- a Minister or Deputy Minister of the State; or
- any other person or body authorised by any enactment to exercise or perform any administrative power or duty; and who has the lawful authority to carry out the administrative action concerned.

The courts have stated that the codification of the principles of administrative justice in the Act and enshrinement in the Constitution "it is no longer business as usual for administrative authorities." In the Lupane State University case MATHONSI J held:

Nyathi & Ors v Lupane State University HB 104/18

Now, in terms of section 68 (1) of the Constitution every person has a right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair. It has been stated that ever since the advent of the Administrative Justice Act [Chapter 10:28], which embodies the constitutional rights contained in section 68 of the Constitution in section 3, that it is no longer business as usual for administrative authorities. They have to make decisions which, when they affect the rights, interests or legitimate expectations of others, are lawful, reasonable and fair



Applications to High Court

Any person who is aggrieved by the failure of an administrative authority to comply with principles of administrative justice may apply to the High Court for relief. The court can grant the following relief:

- confirm or set aside the decision concerned.
- refer the matter back to the administrative authority concerned for consideration or reconsideration.
- direct the administrative authority to take administrative action within the relevant period specified by law or, if no such period is specified, within a period fixed by the High Court.
- direct the administrative authority to supply reasons for its administrative action within the
 relevant period specified by law or, if no such period is specified, within a period fixed by the High
 Court.
- give such directions as the High Court may consider necessary or desirable to achieve compliance by the administrative authority with the principles of administrative justice set out in section three.

(v) Class actions and access to the superior courts

Unlike in the lower tribunals and specialised courts where one can be represented by a person one's choice including paralegals, representation in the superior courts is allowed only for legal practitioners with current practicing certificates.

Common law principles also provide that only persons directly affected by a matter or with substantial interest in the matter can bring suits. This makes it very difficult and expensive for ordinary persons to institute proceedings before the superior courts.

Provisions on class actions in statutes and the Constitution help ordinary persons alleviate these problems and enforce their rights or defend against violations.

Class actions are court proceedings instituted by a representative on behalf of a class of persons subject to formalities prescribed, if any. The major provisions on class actions are under the Class Actions Act [Chapter 8:17] and the Constitution. A concerned representative can apply for class actions before the High Court and Supreme Court.

Where the High Court grants the leave to institute a class action it shall appoint a representative of the class of persons concerned in the class action.

The representative must give notice to the members of the class specifying: (a) the cause of action for the class action; (b) the nature of the relief being sought in the class action; and (c) the class of persons concerned. The representative must also advise members of the class concerned that:

- each member of the class will be bound by the class action and its results unless the member notifies the Registrar of the High Court, within the period specified in the notice, that he/ she wishes to be excluded from the action; and
- each member of the class concerned has the right to apply for leave to intervene in the class action as a separate party to protect his/her interests.
- Financial assistance for costs of the class action and security for costs may be sought by application to the Board of Trustees of the Class Actions Fund.



(vi) Class actions under Constitutional Court

In matters involving alleged infringement of fundamental rights under the Constitution class actions may also be instituted in terms of s 85 by -

- any person acting in their own interests.
- any person acting on behalf of another person who cannot act for themselves.
- any person acting as a member, or in the interests, of a group or class of persons.
- any person acting in the public interest.
- any association acting in the interests of its members.

(vii) Legal Aid

Persons without means to afford lawyers may seek legal aid to prosecute/ defend their cases. The Constitution [s 31] provides a progressive national objective duty on the State to provide legal aid.

Legal aid may be formal statutory legal aid or voluntary legal aid from NGOs. Legal aid may cover both civil and criminal matters.

Formal legal aid refers to the legal aid provided by the Legal Aid Directorate, a department in the Ministry of Justice and established in terms of the Legal Aid Act [Chapter 7:16]. The Directorate has offices in all major towns.

To succeed one must show:

- She/he has insufficient means to obtain the services of a lawyer on their own.
- Has reasonable grounds for initiating, carrying on, defending the proceedings they are applying for legal aid.

The Directorate may require the aided person to contribute to the costs of the legal aid to an extent that the Director considers just and reasonable having regard to the means of the person concerned.

Deductions may also be made from any damages won or settlement made for the benefit of the Legal Aid Fund.

(vii) Enforcement through criminal law litigation/prosecution

Where the conduct complained of is of a criminal nature in addition to the civil remedies, one may also enforce rights through criminal prosecution. Acts such as corruption, fraud and breach of statutory duties are criminal conduct.

One may report a criminal matter before a police station. Where the conduct has an element of corruption, one may also report the matter to officers of the Zimbabwe Anti-Corruption Commission.

Penalties include fines, imprisonment or both fine and imprisonment. The levels of fines are provided in the Criminal Procedure and Evidence (Standard Scale of Fines) Notice, S.I. 192 of 2003, and run from Level 1 to 14.

Although statutes make many acts criminal conduct, it is the conduct of the ordinary people, such as illegal trading, that is most generally policed and prosecuted. In practice there is general reluctance if not hostility by the police, prosecutors and courts to prosecute and convict employers and big businesses.

Where officers decline to prosecute, complaints can be sent to the Attorney General's Office and the Zimbabwe Anti-Corruption Commission.



(b) Rights of detained, arrested or accused persons

Often many in the informal economy are arrested or detained by the police for allegedly violating the law. They may end up being brought before the courts. The Constitution provides protection for such persons:

Constitution: Detained or arrested persons: Section 50 of the Constitution provides that:

- Any person who is arrested—
- (a) must be informed at the time of arrest of the reason for the arrest.
- (b) must be permitted, without delay—
- at the expense of the State, to contact their spouse or partner, or a relative or legal practitioner, or anyone else of their choice; and
- at their own expense, to consult in private with a legal practitioner and a medical practitioner of their choice. and must be informed of this right promptly.
- (c) must be treated humanely and with respect for their inherent dignity.
- (d) must be released unconditionally or on reasonable conditions, pending a charge or trial, unless there are compelling reasons justifying their continued detention; and
- (e) must be permitted to challenge the lawfulness of the arrest in person before a court and must be released promptly if the arrest is unlawful.
- Any person who is arrested or detained for the purpose of bringing him or her before a court, or for an alleged offence.
- and who is not released must be brought before a court as soon as possible and in any event not later than forty-eight hours after the arrest took place or the detention began whether the period ends on a Saturday, Sunday, or public holiday.
- Any person who is not brought to court within the forty-eight-hour period must be released immediately unless their detention has earlier been extended by a competent court.
- Any person who is arrested or detained for an alleged offence has the right—
- to remain silent.
- to be informed promptly— (a) of their right to remain silent; and (b) of the consequences of remaining silent and of not remaining silent.
- not to be compelled to make any confession or admission; and
- Any person who is detained has the right to (a) be informed promptly of the reason for their being detained; (b) at their own expense, to consult in private with a legal practitioner of their choice, and to be informed of this right promptly; (c) to communicate with, and be visited by—
- a spouse or partner.
- a relative.
- their chosen religious counsellor.
- their chosen legal practitioner.



- their chosen medical practitioner; and
- subject to reasonable restrictions imposed for the proper administration of prisons, places of detention, anyone else of their choice.
- To conditions of detention that are consistent with human dignity, including the opportunity for physical exercise and the provision, at State expense, of adequate accommodation, ablution facilities, personal hygiene, nutrition, appropriate reading material and medical treatment; and
- To challenge the lawfulness of their detention in person before a court and, if the detention is unlawful, to be released promptly.
- the lawfulness of the arrest in person before a court and must be released promptly if the arrest is unlawful.
- Any person who has been illegally arrested or detained is entitled to compensation from the
 person responsible for the arrest or detention, but a law may protect the following persons from
 liability under this section—
- a judicial officer acting in a judicial capacity reasonably and in good faith.
- any other public officer acting reasonably and in good faith and without culpable ignorance or negligence.

Constitution: Accused persons on trial: Regarding an accused person facing criminal trial they have several rights under the Constitution provides that person the following rights:

Rights of accused persons on trial – s70 Constitution

- to be presumed innocent until proven quilty.
- to be informed promptly of the charge, in sufficient detail to enable them to answer it.
- to be given adequate time and facilities to prepare a defence.
- to choose a legal practitioner and, at their own expense, to be represented by that legal practitioner.
- to be represented by a legal practitioner assigned by the State and at State expense if substantial injustice would otherwise result.
- to be informed promptly of the rights conferred by paragraphs (d) and,
- to be present when being tried.
- to adduce and challenge evidence.
- to remain silent and not to testify or be compelled to give self-incriminating evidence.
- to have the proceedings of the trial interpreted into a language that they understand.
- not to be convicted of an act or omission that was not an offence when it took place.
- not to be convicted of an act or omission that is no longer an offence.
- not to be tried for an offence in respect of an act or omission for which they have previously been pardoned or either acquitted or convicted on the merits.
- to be sentenced to the lesser of the prescribed punishments if the prescribed punishment for the offence has been changed between the time the offence was committed and the time of sentencing.



Any person who has been tried for an offence has the right, on payment of the prescribed fee, to be given a copy of the record of the proceedings within a reasonable time after judgment is delivered in the trial. [s 70 (4)].

Any person who has been tried and convicted of an offence has the right, subject to appeal the decision or make an application for review to a higher court. [s 70 (5)].

Group Activities for Module 6/Unit 1

In your existing groups, answer the following questions:

- 1. Discuss some of the ways in which you have ensured enforcement and defense of your rights as informal economy players in Zimbabwe.
- 2. Discuss how the constitution of Zimbabwe has enhanced the process through which the informal economy seeks for enforcement and defence of their rights.
- 3. In your view, how have the courts strengthened enforcement and defense of the rights of informal economy players in Zimbabwe?
- 4. In your opinion, which enforcement and defence mechanisms have delivered best outcomes for the informal economy players in Zimbabwe and why?





Module 6/Unit 2:

Defence of Rights through Non-litigation and collective direct action methods

This Unit covers the following topics:

- Introduction
- Chapter 12 Independent Commissions
- Petitions: Parliament, President, and public authorities
- Protests and demonstrations
- Political advocacy
- Case Study: DUF and COPAC Constitutional reform
- Conclusion: An Agenda for Reform

(a) Introduction

The formal litigation camp of enforcing rights can be useful in many instances. However, we have noted the major weaknesses of that system. It is expensive, cumbersome, complex and may take years before disputes are resolved. In addition are the inherent biases, such as class, gender and race that affect the system.

Sometimes quicker and more effective results are achieved by relying on non-litigation and collective direct-action methods. Alternatively, these are used in conjunction with the litigation methods. We look at some of these methods below.

(b) Chapter 12 Independent Commissions

The 2013 Constitution establishes several independent commissions for the defence of democracy and human rights. The general objectives include promotion of transparency, accountability and observance of democratic values and principles by the State and all public institutions and agencies of government and government-controlled institutions and to ensure that injustices are remedied.

These commissions are empowered to investigate violations of human rights in their areas of competence as well as to receive and consider complaints from the public and to take such action regarding the complaints as they consider appropriate to remedy the problems.

Certain types of disputes and complaints, those of generalized non-compliance with the constitution by local authorities, Ministers, and government-controlled bodies, are more effectively and expeditiously enforced by filing complaints and petitions before these commissions. As well as advocacy for reforms of statutes, by-laws and policies by Ministries, local authorities, and parastatals.

The Chapter 12 Commissions are independent and are not subject to the direction or control of anyone; must act in accordance with this Constitution; and must exercise their functions without fear, favour, or prejudice. They are accountable to Parliament. Members of the independent Commissions must not, in the exercise of their functions- act in a partisan manner; further the interests of any political party or cause; (c) prejudice the lawful interests of any political party or cause; or (d) violate the fundamental rights or freedoms of any person. Some of the key commissions include:



(i) Zimbabwe Human Rights Commission



144 Samora Machel Harare, (+263 242 70526)

The Zimbabwe Human Rights Commission has the following functions:

- to monitor, assess and ensure observance of human rights and freedoms.
- to receive and consider complaints from the public and to take such action regarding the complaints as it considers appropriate.
- to protect the public against abuse of power and maladministration by State and public institutions and by officers of those institutions.
- to investigate the conduct of any authority or person, where it is alleged that any of the human rights and freedoms set out in the Declaration of Rights has been violated by that authority or person.
- to secure appropriate redress, including recommending the prosecution of offenders, where human rights or freedoms have been violated.
- to direct the Commissioner-General of Police to investigate cases of suspected criminal violations of human rights or freedoms and to report to the Commission on the results of any such investigation. The Commissioner-General of Police must comply with any directive given to him or her by the ZHRC.



• The Zimbabwe Human Rights Commission may require any person, institution or agency, whether belonging to or employed by the State or otherwise to inform the Commission of measures they have taken to give effect to the human rights and freedoms set out in the Declaration of Rights. Thus, informal economy associations may petition the ZHRC to summon the Minister of Local Government and select municipalities to appear before the Commission and provide a report on measures they have taken to align the parent Act and by-laws to the 2013 Constitution to provide for the right to work of the informal economy.

(ii) Zimbabwe Gender Commission



89 Union Avenue Harare (+263 242 701101

Zimbabwe Gender Commission: Some of its functions include:

- to investigate possible violations of rights relating to gender.
- to receive and consider complaints from the public and to take such action regarding the complaints as it considers appropriate.
- to advise public and private institutions on steps to be taken to ensure gender equality.
- to recommend affirmative action programmes to achieve gender equality.
- to recommend prosecution for criminal violations of rights relating to gender.
- to secure appropriate redress where rights relating to gender have been violated; and
- to do everything necessary to promote gender equality.

(iii) Zimbabwe Anti-Corruption Commission



62 Herbert Chitepo Avenue, Harare, (+263 242 369605



Zimbabwe Anti-Corruption Commission: Some of its functions include:

- To investigate and expose cases of corruption in the public and private sectors.
- to combat corruption, theft, misappropriation, abuse of power and other improper conduct in the public and private sectors.
- to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate.
- to direct the Commissioner-General of Police to investigate cases of suspected corruption and to report to the Commission on the results of any such investigation. The Commissioner-General of Police must comply with any directive given to him or her by the Zimbabwe Anti-Corruption Commission.
- to refer matters to the National Prosecuting Authority for prosecution.

(c) Petitions: Parliament, President and other public authorities

A major method of defending rights and pushing for reform is through petitions. This is even more powerful when accompanied by demonstrations. Petitions may be by single organisations or joined in solidarity with other groups. The Constitution provides both for a general right to petition [s 147] and in particular to petition Parliament [s60]:

- General petitions: Section 60 provides that "Every person has the right to demonstrate and to
 present petitions, but these rights must be exercised peacefully." This is a broad right which can
 be used to present petitions to various public authorities on areas of concern to the informal
 economy and citizens. Examples include:
- Petitions to the President as the Head of State and Cabinet.
- Ministers such as the Minister of Local Government to promulgate Model By-Laws for local authorities which are aligned to the various freedoms and rights now provided for in the 2013 Constitution.
- Mayors and Chairpersons of cities, towns, and local boards. For instance, for the Human Rights Day, 10 December 2009, a united front of informal economy organisations, residents' associations, and the constitutional reform, DUF, had marches to present petitions to the Mayors of Harare and Chitungwiza concerning several issues affecting the informal economy. These included an immediate end to harassment of trades and vendors; audit of stall holders at Mupedzanhamo and other peoples' markets; audit of the licensing system for trading places and demand for progressive by-laws and an end to the "colonial and archaic Laws."
- Police: An example was a march by civic groups, socialist and progressive groups on 10 October 1995 to hand over a petition to the Minister of Home Affairs and protest police brutality against the informal economy following the killing of two traders in the Harare City CBD by the police during raids to remove informal traders from the City Centre.
- Employers. An example was a march organized by trade unions, socialist and progressive
 organisations to protest unsafe working conditions that had led to the deaths of eleven
 construction workers at the Century Towers construction site in Harare and to hand over a
 petition to the Construction Employers Association and the Minister of Labour.



- **Petitions to Parliament:** Section 147 provides that: "Every citizen and permanent resident of Zimbabwe has a right to petition Parliament to consider any matter within its authority, including the enactment, amendment or repeal of legislation." This is an important right. Petitions can be directed to Parliament in general or to relevant Portfolio Committees of Parliament. This is because most of the work of Parliament is done by Portfolio Committees. Some of the most important Committees concerning the informal economy include those of:
- (a) Local Government, Public Works and National Housing;
- (b) Women Affairs, Community, Small and Medium Enterprises Development;
- (c) Public Service, Labour and Social Welfare; and
- (d) Indigenisation and Empowerment.

There have been some good examples of petitions presented to Parliament by social movements, including the informal economy:

Case Study: Peoples' Petition to Parliament on Constitutional Reform: On 10 December 2009, on Human Rights Day, the Democratic United Front for a People-Driven Constitution [DUF], a constitutional reform advocacy movement of over 130 pro-poor and working people social movements, trade unions and organizations including from the informal economy had a march to Parliament to present a "Peoples' Petition to Parliament." The Petition was addressed to; the Speaker of Parliament, The Minister of Finance and the Mayor of Harare and the Mayor of Chitungwiza. It demanded "a People - Driven Constitution Now and Reject the Anti-Poor and Anti-Worker Draft 2010 National and Local Budgets.' Amongst its demands were:

- "Firstly, the people reject the elitist draft budget proposed by the Minister of Finance which is based on free-market neoliberal principles that have failed both in this country as ESAP and under the current global economic crisis...
- Secondly, we demand an immediate end to the harassment of vendors, traders, and other
 informal sector workers of Harare and Chitungwiza. The right to trade, vend and self-employment
 is a fundamental human right. We demand compensation for lives lost and goods seized as
 indicated fully in the accompanying petition...
- Finally, we demand ... the immediate starting of a democratic constitution making a process that is inclusive, including the full participation of civic society... We demand a constitution that includes fully funded social-economic rights for the poor and majority from the state, big business, and the natural resources of Zimbabwe...
- WE serve notice that should parliament and government refuse to heed the people's demands we
 and all democratic and poor people's movement shall mobilise for an all-out struggle to defend
 our rights, our families our livelihoods and our county for whom so much blood has been shed,
 including withdrawal from the sham constitution-making process."



Case Study: Petition to COPAC by informal economy organisations:

On 5 July 2009 a Petition was presented to the Convener of the Parliament Select Committee on Constitution (COPAC) by an assembly of informal economy organisations, including ZCIEA.138

Constitutional Petition to Parliament – COPAC

"Being cognizant of the fact that around 90% of the people in Zimbabwe now rely on the informal economy or micro enterprises to fight poverty .we strongly recommend / move a motion that constitutional issues around self-employment / micro enterprises be separated from the mainstream economy and treated separately under any suitable thematic cluster heading."

(d) Protests, Demonstrations, Marches and Strikes



Some of the most powerful methods for defending and enforcing rights and advocacy for reform are through demonstrations, protests, and political advocacy. A founding value and principle of Zimbabwe is that of good governance. [s 3]. This compels on the State "to adopt and implement policies and legislation to develop efficiency, competence, accountability, transparency, personal integrity and financial probity in all institutions and agencies of government at every level and in every public institution, and in particular— (a) appointments to public offices must be made primarily on the basis of merit; (b) measures must be taken to expose, combat and eradicate all forms of corruption and abuse of power by those holding political and public offices."

¹³⁸ And also, Zimbabwe Cross Border Traders Association, Alternative Business Association, Zimbabwe National Association of Small and Medium Enterprises and DUF.



There are several provisions that facilitate the right to protest and demonstrate:

- We have already referred to s 59 which provides for the freedom to demonstrate and to petition.
- The right to protest is provided in s 67 includes amongst others the right to- to participate, individually or collectively, in gatherings or groups or in any other manner, in peaceful activities to influence, challenge or support the policies of the Government.
- Related rights include freedom of assembly and association, [s 58], freedom of expression, [s 61], and right to access of information held by the State and other public bodies, [s 62].
- The Constitution [s 65 (3) and the Labour Act [s 104) provide for the right to collective job action, including strikes, sit-ins. Strikes express the massive power of workers because they stop production, from which the profits and ultimate power of the capitalist come from. The most powerful form of strikes are General Strikes across entire layers of the economy. But such strikes are not only powerful because of their economic impact. Critically they raise the class confidence and consciousness of the working class to realise the great potential power they have under capitalist society to cause change and revolution and effect a new society based not on the profits of the few and the market but the satisfaction for the human needs for all, that is socialism.

Note that public demonstrations and marches and public assemblies require the conveners to notify the regulating authority, that is the officer in command of each police district in terms of the Maintenance of Peace and Order Act [Chapter 11:23]. Not that the requirement to notify the police does not apply in relation to public gathering: (a) called exclusively for bona fide educational, recreational, sporting, charitable purposes; of members of professional, vocational bodies held for purposes which are not political; held by any club, association or organization which is not of a political nature and at which the discussions and matters dealt with are not of a political nature; and held by a registered trade union for bona fide trade union purposes for the conduct of business in accordance with the Labour Act.

The police have tended to be overzealous and partisan in how they regulate public marches. They give a blank cheque to groups associated with the ruling party, whilst they are very strict and generally decline marches by groups and associations they view as oppositional. Where the police decline to authorize a march, one may lodge an appeal with the relevant Magistrate Court.

CASE STUDIES

There have been many powerful demonstrations and marches, especially in the wake of the neoliberal structural adjustment programmes. A few examples:

Case Study 1:

1992 ZCTU Demonstrations: In 1992 as the government escalated its drive to neoliberal policies it gazetted the Labour Amendment Bill, 1992, one of whose main purposes was to establish labour flexibility and de-regulation to make it easier for employers to dismiss and retrench workers. The ZCTU organized demonstrations nation-wide. The police attacked the demonstrators and several of them were arrested and convicted under laws prohibiting marches without police approval. The ZCTU appealed the convictions which were eventually overturned by the Supreme Court in a milestone decision. The court held that the freedom of assembly lay "at the foundation of a democratic society" and outlined a strict test on when derogations are permissible. See, In re Munhumeso and Others 1994 (1) ZLR 49 (S).



Case Study 2:

1997 ZCTU General Strike. In the face of rising protests by workers and war veterans against worsening living and working conditions because of the neoliberal ESAP programme, the Government imposed a special tax on workers to fund a new compensation scheme that Government had introduced to pacify demonstrating war veterans, the ZCTU called for a General Strike on 9 December 1997. The General Strike was massive with over a million workers striking. It became the second and biggest General Strike since the 1948 General Strike. The Government was forced to scrap the special war veteran's levy. The General Strike build confidence and momentum amongst workers and the urban poor to eventually build a political party, the Movement for Democratic Change [MDC] which was to become the most powerful opposition party since 1980 and defeat President Mugabe and Zanu PF in the March 2008 General Elections. The opposition also played a major role in pushing for the 2013 Constitution. for a major decision which upheld that the right to freedom of expression and assembly under the Constitution guaranteed the right to demonstrate.

(e) Political Advocacy and Political rights





The Constitution guarantees every Zimbabwean political rights, which includes the following:

Political rights under the Constitution

Under s 67 every citizen of Zimbabwe has the rights to:

- free and fair elections.
- vote in all elections and referendums to which this Constitution or any other law applies.
- stand for public office.
- make political choices freely.
- campaign freely and peacefully for a political party or cause.
- participate in peaceful political activity; and,
- to participate, individually or collectively, in gatherings or groups or in any other manner, in peaceful activities to influence, challenge, or support the policies of the Government or any political or whatever cause.

Citizens also have the following rights:

- freedom of assembly and association, [s 58]
- freedom of expression, [s 61], and,
- right to access of information held by the State and other public bodies, [s 62].

The method of political advocacy to defend rights and win reforms is a major right that was won in the 2013 Constitution. Often it is much easier to influence the State and Parliament through political activities like marches, gatherings, demonstrations, and petitions to the Government, local authorities, and Parliament.

Social movements can target political parties and candidates to push their demands and support and canvass those who will support their demands.

A good example was the formation of MDC led by trade unions arising out of the mass strikes and stay-aways of the period 1996 - 2000. The MDC got nearly half of the seats in the 200 General Elections. Many of its MPs were trade unions, social movement, and socialist activists. In Parliament, they worked with trade unions and pushed for and won the passing of the Labour Act [Chapter 28:01], the most progressive labour statute in the history of Zimbabwe, even if it still has areas of deficit.

Another major example was the constitutional reform process in which grassroots-based movements were able to push for constitutional reform, including campaigning for a position in the 2013 Referendum.



CASE STUDY: DUF and COPAC constitutional reform

Following the 2008 elections in which the opposition MDC defeated the ruling party but was undemocratically denied assumption of power, a Government of National Unity was set up. One of the key tasks of the GNU government was constitutional reform after the abortive failure of the 2000 draft Constitution which had been rejected by a majority in a campaign led by the civic constitutional advocacy movement, the National Constitutional Assembly (NCA). After a slow start, the constitutional reform exercise eventually kicked off in earnest after 2010 under the stewardship of the Parliament Select Committee on Constitution, COPAC, which was led by the three parties to the GNU. Worried about how the NCA process was dominated by middle-class liberals and not radical enough from a pro-poor and anti-neoliberal basis, a more radical, pro-poor united front was established, the Democratic United Front for a People-Driven Constitution [DUF]. It was composed of social movements including the informal economy, radical trade unions, ZINASU, the national student's union, women's organizations, and socialist organizations.

DUF participated vigorously in the constitutional reform process including the convening of a Working People's Constitutional Convention on 13 October 2012 in Harare attended by over 300 delegates from trade unions, women and gender movements, Youths, the Disabled, Residents Associations, Student Movements, Rural Framers, Informal Sector activists, progressive academics, and revolutionary socialists. It came up with a Working Peoples Constitutional Convention Declaration which provided for amendments and inputs into to the COPAC Draft Constitution from a pro-poor perspective. This was submitted to the COPAC All-Stakeholders Conference that eventually came up with the Constitution. Some of the demands included:

INFORMAL ECONOMY DEMANDS IN NEW CONSTITUTION - DUF

- The Declaration of Human Rights Chapter of the Constitution to recognize as basic Rights: shelter, education, health, food, water, public transport, social welfare, and security.
- The Declaration to recognize right to social welfare and social security for all covered by a mandatory and purpose specific national social security scheme to cover contingencies of maternity, pregnancy, paternity, illness, disability, death, retirement, and unemployment.
- Declaration to clearly specify time frameworks within which the State must fully realise the socio-economic and other rights guaranteed in the Constitution.
- Declaration to provide for a Socio-Economic Rights Fund levied on mines, banks, major businesses, and new foreign investments to fund recognized socio-economic rights.
- Declaration to recognize full Economic Rights to Work for the informal sector including removal of all impediments, laws, and policies that inhibit or prevent right or ability to work or trade in the informal economy, to empowerment, and to social security.
- Declaration to provide full Labour and Work Rights for all public and private sector workers...



At the public meetings that were convened by COPAC to get the views of the public on the Draft COPAC Constitution, DUF organizations and activists actively participated in submitting the Working People's Constitutional Declaration as well as sector specific Draft Bills.

These included:

- Draft Bill of Traders, Vendors, and Informal Sector Workers
- Draft Bill of Rights of Residents and Social and Basic Utilities
- Draft Bill of Workers Rights

Some of the representatives of DUF were eventually appointed as sub-chairpersons of thematic sub-committees on the key thematic clusters of the draft Constitution, deputizing the chairpersons appointed from the three GNU parties. These included R Majongwe on the War Veterans Cluster and M Gwisai on the Land, Natural Resources, and Empowerment Cluster. Emilia Muchawa from the Women's Coalition was deputy chair for the Women and Gender Issues cluster.



Source (News. pindula.com)

Dissatisfied with the eventual COPAC Draft Constitution, DUF joined with the NCA to campaign for NO in the Referendum to adopt the draft Constitution in 2013 but was unsuccessful. Nonetheless, the interventions of the social movements had a significant impact.

The influence of DUF and other progressive movements like the NCA and Women's Coalition had a telling impact on the eventual Constitution Many of the progressive reforms on the rights of the informal economy, workers and women, and socio-economic rights that were to be included in the eventual 2013 Constitution were a result of the hard work and intervention of progressive organisations including trade unions, Women's groups, NCA and DUF.

Group Activities for Module 6/Unit 2

In your existing groups, please answer the following questions:

- 1. Discuss how you have applied existing non-litigation and collective action avenues in advancing and defending your rights as informal economy players in Zimbabwe.
- 2. Discuss the benefits the informal economy players derive from using existing non-litigation and collective action avenues in defending their rights in Zimbabwe.
- 3. How can the informal economy players blend both litigation and non-litigation and collective avenues for better outcomes in defending their rights in Zimbabwe?
- 4. What improvements would you wish to make on existing non-litigation and collective avenues to achieve better outcomes in defending the rights of informal economy players in Zimbabwe?







Module 6/Unit 3:

An Agenda for Reform

The Handbook has provided a detailed survey of the laws and policies covering the informal economy in Zimbabwe. It has looked at the different mechanisms for the enforcement and defence of rights. It also has various areas for reform.

Perhaps the most important gain made by workers in the informal economy were the various gains made in the 2013 Constitution. The Constitution recognizes the right to work for the informal economy and other related rights and freedoms, whether as actual rights or National Objectives to be realized progressively over time.

Equally at international level, recent developments have seen the adoption of instruments that have greatly expanded the possibilities for the informal economy, in particular the transition to formality. Notable amongst these have been the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), the Social Protection Floors Recommendation, 2012 (No. 202) and the Violence and Harassment Convention, 2019 (No. 190).

The 2013 Constitution and the various international law instruments set the principal agenda for reform and ensure that rights gained are turned to reality. Perhaps the biggest reform item is to align the various statutes, by-laws and policies of the State at all levels. Of particular relevance is the realignment to the 2013 Constitution at local authority levels, incorporating the principles established in the various international law instruments.

A major milestone in this regard has been the adoption of the City of Harare SMEs Policy, 2023 which has adopted much of the developmental and inclusive approach that underlies the 2013 Constitution. ZCIEA along with other associations of the informal economy and residents' associations actively participated in the drawing up of the Policy. The main challenge is now to ensure that the provisions of the Policy are translated into the legal framework of the city, in particular the By-laws and that its provisions are implemented, whilst reform of outstanding areas continues.



Source (ZCIEA)

Honorable C Chingosho during a breakfast meeting with Parliamentarians on ZCIEA Policy Position on Formalisation of the Informal Economy 2020,



The following areas will be important for the reform agenda.

(a) Alignment of Local Authority Statutes

There is a need for the principal laws to be aligned to the 2013 Constitution to allow for an effective right to work for the informal economy.

The key statutes are the Urban Councils Act [Chapter 29:15] and the Rural and District Councils Act [Chapter 29:13]. Examples from South Africa, namely the Business Act, of 1991 provide a good precedent.

In particular, there is the need to push the Minister to establish Model By-Laws for the Informal Economy as provided in the Act. This should be after an inclusive and democratic consultative process. Informal economy organizations can initiate the process by preparing draft Models for consideration by the Minister and if there is no movement, applying pressure through the various mechanisms such as the constitutional independent commissions and petitions and marches.

(b) Alignment of Local Authority By-Laws and Policies

The local authorities' By-laws are not aligned with the Constitution in relation to the rights of the informal economy. Even those that have undertaken recent reforms and achieved some gains (such as the Bulawayo City), still fail to incorporate the developmental and inclusive approach of the Constitution. Notably, the City of Harare By-Laws are lagging even more, having been made in 2014.

There is an urgent need to push for new By-Laws that are consistent with the Constitution, again drawing inspiration from models in the SADC region, especially South Africa.



ZCIEA General Secretary W. Malaya visiting members in Harare.

Source: ZCIEA



City of Harare SMEs Policy launched in June 2023 marks a major milestone that provides a radical departure from the repressive and exclusionary approach of the past. There is now a need to overhaul the By-Laws to become consistent with the Policy. There are still outstanding areas in the Policy including: The Policy also lays a good precedent for other local authorities with modifications in lacking areas. Areas that remain lacking include:

- The provisions on penalties including cancellation of leases and permits must respect principles of administrative justice and substantive and procedural fairness. Cancellation should be a last resort and only for the most serious offenses.
- There is a need to include principles of fairness and ethical conduct in the Enforcement Framework provisions in particular in areas dealing with impounding and seizure of goods.
- Need for provisions for collective bargaining processes at city-wide level and local levels and binding agreements in terms of areas agreed between the Council and associations of the informal economy.
- Need to provide for rights and privileges of registered associations viz the Council and protection of representatives of informal associations from unfair victimization.

(c) Alignment of town planning and zoning legislation

There is an urgent need to align the town planning and zoning legislation including local master plans to fully incorporate the needs of the informal economy. Of particular importance are statutes like the Regional, Town, and Country Planning Act [Chapter 29:12] and the Shop Licenses Act [Chapter 14:07]. The statutes must provide for the consultation and involvement of associations for the informal economy as has been pioneered in the City of Harare SMEs Policy, 2023.

(d) Social security laws

The continuation of the dualist and unequal formal social system inherited from colonialism, which marginalizes the vast majority of the population should not be tolerated any longer given the new imperatives and values under the 2013 Constitution.

This calls for reforms to attain an integrated, inclusive, and comprehensive national social security system for all. The starting point for this must be the various schemes under the National Social Authority Act [Chapter 17:04]. These include NSSA (Accident Prevention and Workers Compensation Scheme) Notice No. 68 of 1990, and NSSA (Pension and Other Benefits Scheme) Notice, 1993.

Reforms must include the establishment of a compulsory national maternity scheme.

City of Harare SMEs Policy 2023. This has made milestone pioneering initiatives in this regard. It provides that the City of Harare will work closely with NSSA and reputable insurance companies to offer social protection to SMEs. It will further require all SMEs registered with the Council to comply with NSSA regulations. These initiatives must be done with the full participation of the representatives of associations of the informal economy such as ZCIEA.

(e) General business laws

Essential is the reform of laws on business operations and the organisation of the informal economy to ensure full corporate status. Of importance are possibilities under the Co-Operatives Act [Chapter 24:05] and the Small Medium Enterprises Act [Chapter 24:12].

Decriminalization: Equally must be the decriminalization of informal work activities under the Criminal Law (Codification and Reform) Act [Chapter 9:23.]



(f) Integration of informal economy in policy formulation

The developmental and inclusive approach under the 2013 Constitution demands the full and active involvement of workers in the informal economy and their representative associations in the formulation of policies and laws that affect them. This must be at the national level as well as the local level.

- National Strategy of Transition to Formalisation of the Informal Economy. It is of critical and
 urgent importance that the inputs of associations of the informal economy are included in the
 ongoing exercise to establish the National Strategy of Transition to Formalisation of the Informal
 Economy, which was launched in 2022. The associations must be involved in every stage including
 concept formulation, research, writing, and feed-back.
- Tripartite Negotiation Forum. This is set up in terms of the Tripartite Negotiation Forum Act, 2019 (No. 3 of 2019). The Forum brings together Government, organized business, and organized labour to amongst others consult, negotiate and make recommendations on economic and social issues affecting the country. However, it currently does not provide for the inclusion of the informal economy and SMEs as does the equivalent in South Africa of NEDLAC. There is a need for legislative reform for their inclusion and pending their inclusion on observer status. It cannot be just, fair, or democratic that bodies that represent the majority of persons who work are excluded from this national body.
- Ministry of Local Government and Public Works: The Ministry is at the centrepiece of by-laws
 and policies that impact the informal economy. Including critically the setting up of Model By-Laws
 for local authorities. Advocacy is necessary for the Minister to set up a consultative and advisory
 body that will make recommendations in areas that affect the informal economy, including the
 model by-laws.
- Local authorities: This is the most important and direct State interface with the informal
 economy. Reform is required for the full involvement and participation of workers in the informal
 economy and their representative associations in all matters affecting the informal economy. The
 City of Harare SMEs Policy, 2023 is a major milestone precedent in this regard. Important areas
 include:
- The need to harmonise all by-laws, and policies concerning the informal economy to provide
 ease of doing business for the informal economy. This should be with the full involvement of
 representative associations of the informal economy.
- Integration and full participation of associations of the informal economy in the planning, and implementation of policies and plans concerning the informal economy at all levels.
- Strategic impact litigation: Whilst campaigns, petitions, and other interventions for reform as
 discussed above continue, there is also a need to engage in strategic impact litigation before the
 High Court and Constitutional Court, in particular, to force alignment of key statutes and by-laws
 of concern to the informal economy.

The struggles that were waged by the informal economy movements and associations in the constitutional reform process that led to the 2013 Constitution show the immense possibilities for reform. The basis for reform has been laid in the supreme law of the law.

It is now the task of the informal economy movements to use the different strategies and platforms discussed in this manual to drive for the realization of these rights in the day-to-day lives of their members. This requires on the one hand awareness and consciousness of one's rights and the operating legal and policy framework.

This manual helps in that direction. But to achieve sustainable gains will require the collective mass self-activity of the movements of the informal economy.



Group Activities for Module 6/Unit 3

In your existing groups, please answer the following questions:

- 1. Discuss the engagement of the informal economy in driving the reform agenda in Zimbabwe.
- 2. Discuss the gains that have been realised in the informal economy in Zimbabwe through the reform agenda.
- 3. How would you embrace the City of Harare SMEs Policy as an avenue to advance the realization of the reform agenda in the informal economy in Zimbabwe?
- 4. In your opinion, how best can the informal economy take advantage of the reform agenda as a tool to realize the required reforms in the informal economy in Zimbabwe?

References

Administrative Court (Miscellaneous Appeals) Rules, 1980 (SI 122/1980).







