

**Report of the Independent Expert on protection
against violence and discrimination
based on sexual orientation and gender identity**

Gender, sexual orientation and gender identity

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Glossary

CSO- Civil Society Organisation

ICCPR- International Covenant on Civil and Political Rights

IVF- In-vitro Fertilisation

LGBTI/ LGBTIQ- An umbrella term. In full: Lesbian, Gay, Bisexual, Trans*, Intersex/ Queer

LOIPR- List of Issues Priori to Reporting

SGBV- Sexual and Gender Based Violence

SOGI/ SOGIE- Sexual Orientation, Gender Identity, and Gender Expression

STI- Sexually Transmitted Infection

UN- United Nations

Introduction

Joining organisations¹

- Trans* Research Education, Advocacy & Training (TREAT) – (Sam G Ndlovu and Dzoee Ahmad– treatorg22@gmail.com and dzoeamhad@gmail.com)
- Trans* and Intersex Rising Zimbabwe (Q Bee Chihera Meki – transrisingzimbabwe@gmail.com)
- Rock of Hope (Eswatini)
- Nyasa Rainbow Alliance (Malawi)

¹ With the support of the Centre for Civil and Political Rights

Eswatini

- 1) What kinds of information and data are collected by States to identify forms of violence and discrimination faced by people based on sexual orientation and gender identity? Is the data designed to capture causes and patterns of violence and discrimination against lesbians, gay men, bisexual women, bisexual men, trans women, trans men, and gender diverse persons?**

There is no specific data collection tool meant to identify forms of violence based on SOGIE.

- a) does the data include information on the relationship between victims and perpetrators?**
No.

- 2) Is comprehensive sexuality education taught in schools?**
No.

- a) if not, are there efforts deployed by the State to establish and promote comprehensive sexual education, which incorporates diverse sexual orientation and gender identity perspectives? What have been the obstacles to adopt such policies or programs? Also, is the State adopting any alternative measures?**

There have been no efforts made by the State to promote comprehensive education in schools. The LGBTI issue remains a sensitive subject with parents being oblivious of the situation and being against it. In a recent media article, an LGBTI organization which visited a school was bashed by the populace for trying to promote the LGBTI agenda and trying to 'recruit' their children into homosexuality. In tertiary institutions, LGBTI organisations are only allowed to do SOGIE presentations upon request or invite.

- 3) Are there examples where the concept of gender has been used in religious narratives or narratives of tradition, traditional values or protection of the family to hinder the adoption of legislative or policy measures aimed at addressing or eradicating violence and discrimination based on sex, gender, sexual orientation and gender identity?**

The church has continuously been viewed as one of the culprits or perpetrators of discrimination against LGBTI people. The church is a devoted subscriber to heterosexism and in many instances has shunned the ideology of the LGBT populace. Famous verses (6 bullets) are used against the LGBTI populace. The country's constitution continues and authorities continue to use the Bible and the belief in Christianity to shun policies that may hinder the adoption of Pro-LGBTI policies. For instance, a former Ludzidzini Governor denounced the LGBTI existence and mentioned how it was uncultural and that heterosexism was the main value.

- 4) Can you provide examples of coalitions working together on resisting attacks on gender ideology? Please share examples of feminist and LGBT and other groups working together and with what kinds of frameworks, arguments and results?**

In Eswatini, under the Rights4All campaign, a Woman and LGBTI Cluster was formed to lobby against issues that pertain to them. Under the coalition, the Rural Womens Assembly, Women and Law Swaziland, the Rock of Hope Eswatini, Eswatini Sexual and Gender Minorities etc groups were part of the working group. In their work, they lobbied using the CEDAW framework. Arguments made included the continued discrimination of LGBTI people and people including environmental laws, land rights etc.

Malawi

- 5) **Has the State ratified, signed, or adhered regional or international human rights treaties, declarations, programs or policies or any other international instruments aiming to address violence and discrimination based on sexual orientation and gender identity that involve the implementation of a gender framework (for example gender theory, gender-based approaches, gender perspective, gender mainstreaming)?**

Among other treaties, Malawi is ratified under the African Charter to protect LGBTQI persons, especially in accordance with Resolution 275. However, the state has not carried out any evaluations, assessment or evidence-gathering about the impact of the implementation of such actions. Recently, President Lazarus Chakwera has left the issue of legalizing same-sex marriage to the country's citizens to determine how the matter should be handled

- 6) **Is comprehensive sexuality education taught in schools?**
- if yes, please provide information as to the respective programs. Please provide examples (e.g. copies of curricula, citations to policies).**
 - if not, are there efforts deployed by the State to establish and promote comprehensive sexual education, which incorporates diverse sexual orientation and gender identity perspectives? What have been the obstacles to adopt such policies or programs? Also, is the State adopting any alternative measures?**

Malawi provides comprehensive sexuality education in schools. It is called life skills here. However, The curriculum is not exhaustive on issues of sexuality.

Another notable problem is that there is no specialization of this course in colleges. As such, those who teach this course/subject, teach out of passion or choice. Sometimes those interested undergo an orientation based on the curriculum that is not comprehensive and inclusive.

- 7) **Have there been public expressions or statements by political and/or religious leaders that have led to indefinite extension, modification or suppression of actions, activities, projects, public policies or application of gender frameworks?**

There are a lot of public expressions that fuel stigma and discrimination:

- **Hate Speech by Msonda**
Msonda a renowned politician made a speech where he referred gay persons as dogs.²
- **Hate speech on social media, articles, and media**
Various media outlets have published stories of LGBTIQ people in negative way.³
- **Religious protest against LGBTIQ person from Mzuzu**

² <https://outrightinternational.org/content/judgment-malawi-hate-speech-case-reserved>;
<https://malawi24.com/2016/01/10/msonda-dares-gay-rights-activists/>;
<https://www.reuters.com/article/us-malawi-lgbt-rights-idUSKCN0V02DG>;
<https://76crimes.com/2017/01/16/malawi-court-to-decide-is-it-hate-speech-to-say-kill-the-gays/>

³ For example : <https://www.nyasatimes.com/homosexual-community-in-mangochi-get-food-items-ppees-from-manerela/>; <https://www.news24.com/news24/africa/news/picture-of-gay-malawian-man-goes-viral-after-brutal-attack-20160209>; <https://www.mwnation.com/an-hour-with-a-confessed-lesbian/>

A group of young pastors in Malawi have called on the government to arrest 4000 homosexuals living in the northern city of Mzuzu.⁴

- **Case of gay man publicly outed in social media**

A gay man posted a photo of himself at family wedding on Facebook. Some of his followers came to the post and instead of commenting on the photograph, outted him and castigated him for being Gay. Screenshots of the post were taken and consequently shared on other social media platforms such as WhatsApp and Twitter. Being known as a gay person in Malawi attracts a lot of hate speeches on social media, which is also a form of cyber bullying. His right to privacy was compromised. His character was defamed.

Zimbabwe

International Legal Frameworks in Zimbabwe Governing SOGIE in relation to Gender

Zimbabwe is signatory (and has ratified) several Key international and regional instruments that govern SOGI issues viz-a-viz gender. In carrying out this analysis, the following were identified:

- Universal Declaration on Human Rights (UDHR), 1948;
- Convention on the Rights of the Child (CRC), 1989;
- International Covenant on Civil and Political Rights (ICCPR), 1966;
- Convention on All Forms of Discrimination against Women (CEDAW), 1979;
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966;
- Convention on the Rights of people with Disabilities (CRPD), 2006;
- African Charter on Human and Peoples' Rights (ACHPR), 1981;
- Protocol to the ACHPR on the Human Rights of Women in African, 2003;
- African Charter on the Rights and Welfare of the Child (ACRWC), 1990.

⁴ <https://www.africanews.com/2016/03/29/malawian-pastors-want-government-to-arrest-4000-homosexuals//>; <https://www.timeslive.co.za/news/africa/2016-03-29-malawian-pastors-threaten-government-with-court-action-to-force-arrest-of-4000-gays/>; <https://africa.cgtn.com/2016/03/29/malawi-pastors-threaten-to-sue-government-for-failure-to-arrest-gays/>

It must be noted that in implementing these international statutes, Zimbabwe (as with other states) required to not only merely abide by these statutes, but has an obligation to ensure that private persons within its borders abide by these statutes as well.⁵

Furthermore, it must be noted that Zimbabwe has a dualist legal system, this means that treaties that are concluded, ratified or acceded to by the government have no automatic application in the national legal system. They would require domestication first. In terms of Section 327 of the Constitution of Zimbabwe, an international treaty which has been concluded or executed by the President or under the President's authority does not bind Zimbabwe until it has been approved by Parliament and does not form part of the law of Zimbabwe unless it has been incorporated into the law through an Act of Parliament.

Benchmarks for meeting these provisions were highlighted in the National Plan of Action for the Implementation of the UPR Recommendations (2017-2020).

Municipal Legal Frameworks and State Practice in Zimbabwe Governing SOGIE in relation to Gender

It must be noted that Zimbabwean society, and thereby state practice, is rooted in a very conservative, ci-heteronormative view of biological sex, gender, orientation, and sexual practices. As such, the states perception of the term is often construed to mean "in relation to the rights of (cis) women vs (cis)men. This is evident in the couching of provisions relating to remedying gender disparity, and localisation of international obligations.

Section 56 of Zimbabwe's constitution, subsection (1) entails among other things the right to equal protection and benefit of the law. Although section 56 mentions specific grounds of discrimination, it does not include ones SOGIE identity. However, the list is not exhaustive. Section 80 of the Constitution provides for women's rights to equality and protection from discrimination. Every woman shall enjoy full and equal dignity to men, and this includes equal opportunities in political, economic and social activities. All laws, customs, traditions and

⁵ The African Commission on Human and Peoples' Rights, *Zimbabwe Human Rights NGO Forum v Zimbabwe*, Comm. 245/2002, stated at paragraph 143 that: "*Human rights standards do not contain merely limitations on State's authority or organs of State. They also impose positive obligations on States to prevent and sanction private violations of human rights. Indeed, human rights law imposes obligations on States to protect citizens or individuals under their jurisdiction from the harmful acts of others. Thus, an act by a private individual and therefore not directly imputable to a State can generate responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or for not taking the necessary steps to provide the victims with reparation.* available at <http://caselawihrda.org/doc/245.02/pdf> [Accessed June 2018].

cultural practices that infringe the rights of women are void to the extent of their inconsistency with constitutional rights. Section 25 of the Constitution provides for protection of the family, which includes the prevention of domestic violence (although this provision is arguably non-justiciable, since it is located in the National Objectives) and legislative reforms have taken place to strengthen protection against domestic violence.

The Prevention of Discrimination Act is intended to prohibit discrimination on the ground of race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender, It also seeks to provide remedies to persons injured by discrimination. Discrimination on the listed grounds is prohibited in relation to access to public premises, commodities, services and facilities. It does not specifically prohibit discrimination on the basis of sexual orientation or gender identity and expression.

The Domestic Violence Act [Chapter 5:16] criminalises all forms of psychological, emotional, economic, physical and sexual violence. The Criminal Law Code also protects women from GBV and the Anti-Domestic Violence Council has been set up to enforce protections.

The revised National Gender Policy (launched in July 2017) has eight priority areas that include gender and health and gender and GBV.⁶ The annual 16 Days of Activism against GBV, media and other campaigns have helped to raise awareness. There have also been calls for stiffer penalties on sexual offences while there has been an increase in the number of organisations (including men's forums) supporting survivors of GBV, trafficking and other forms of abuse. Also noteworthy is the Multi-Sectoral Protocol on Sexual Abuse, established in 2012 by the Judicial Service Commission with a view to improve the Government's response to child and adult sex abuse and GBV.

With regard to children, Zimbabwe is party to key regional and international instruments that seek to protect children from harmful practices and sexual abuse. They include the ACRWC,⁷ the Protocol to the ACHPR on the Rights of Women in Africa (The Maputo Protocol),⁸ CEDAW⁹ and the CRC.¹⁰

⁶ www.women.gov.zw/downloads?download=3:2013-national-gender-policy, 13/03/2021.

⁷ Adopted on the 11th July 1990 and came into force on the 29th November 1999 and Zimbabwe ratified on 19 January 1995.

⁸ Adopted on 7 November 2003. Came into force on 25 November 2005 and Zimbabwe ratified on 15 April 2008.

⁹ Entered into force on 3 September 1981 and Zimbabwe acceded to it on 13 May 1991.

¹⁰ Article 1 of the CRC.

It is important to note that in all these provisions, there is no single provision that explicitly mentions LGBTI people., or a non- cis-heteronormative view point with regards to their interpretation and implementation. At law, and in practice, this has often meant that LGBTI people have not enjoyed the exercise of these provisions and mechanisms that address gender-related issues.

Discrimination against LGBTI persons

LGBTI persons in Zimbabwe experience a climate of intimidation, stigma, and discrimination, which often results in their exclusion from society, public service, and job and development opportunities. Numerous LGBTI persons have lost their jobs, been expelled from educational institutions, or been evicted once their sexual orientation or gender identity has been revealed.¹¹

During the discussions held with the LGBTI community, stigma and discrimination were highlighted as a major issue of concern. Public attitudes towards LGBTI persons are generally intolerant, thus LGBTI persons generally do not openly express their sexuality or gender identity in their workplaces, or within their families.

Stigma and discrimination also display themselves in general public service delivery in Zimbabwe. This has negatively impacted LGBTI persons access to health care services; negative attitudes from health care providers has been a major obstacle for LGBTI identifying persons in Zimbabwe. The high level of stigma and discrimination in public health care facilities, has seen health care givers even calling each other to come and mock (for example) a gay men with an anal STI, or even ask insensitive questions with regards to the identity documentation not matching with the appearance of transgender individuals. Such a hostile environment has resulted in LGBTI people adopting poor health seeking behaviours and experiencing other related issues such as defaulting on medicines.

Though the state has done little to address stigma and discrimination at higher levels, notable progress should also be acknowledged, for example the coming up of the Key population's implementation plan which was developed by the National AIDS Council, a governmental body in HIV programming in Zimbabwe. It is also important to note the Ricky Nathanson case.¹² The judgement, to some extent, addressed the equal protection of LGBTI identifying persons. More so, the case raised issues regarding

¹¹ UK Home Office *Country Policy and Information Note Zimbabwe: Sexual orientation and gender identity and expression*, January 2019
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775001/CPIN-ZIM-SOGIE-V4.0e-Jan-2019.pdf

¹² *Nathanson v Mteliso & Others* (HB 176/19. HC 1873/14) [2019] ZWBHC 135 (14 November 2019)

minority rights in this country. This judgment has and will help advocates spark a frank national conversation of these issues which we appear to have been shy or less enthusiastic to openly discuss.

Politicians, traditional leaders, and religious leaders have publicly rejected LGBTI people. Senior figures in the government, particularly the former president Robert Mugabe, used anti-LGBTI rhetoric in public addresses. For example, during his speech in September 2015, then President Mugabe declared to the UN General Assembly:¹³

“We equally reject attempts to prescribe ‘new rights’ that are contrary to our values, norms, traditions, and beliefs We are not gays.”

However, during the Harmonised elections in July 2018, a leading LGBTI rights group (GALZ) was appointed as a 2018 Election Observer. They noted the decline in the use of hate speech and harassment of the LGBTI community as compared to past election periods.¹⁴ On the other hand, authorities were also reported to commonly harass LGBTI persons on the grounds of indecency and public order offences.¹⁵

The Zimbabwean Constitution specifically prohibits same sex marriage. The criminal code specifically prohibits same sex sexual conduct amongst men (specifically anal sex, which is classified as sodomy), and to a lesser extent, same sex sexual activity amongst women (classified as indecent sexual assault). The Children's Act stands as a barrier to same sex couples adopting children as i). Individuals cannot adopt a child of the same sex on their own without extreme scrutiny; ii). The act shows a marked preference that adoption occurs within a two parent (and presumed heterosexual) context. The right to found a family is further made difficult for same sex couples in that IVF procedures can be both costly, and sources of stigma by the provider of such services in that the providers prefer to offer services to heterosexual couples, and at times may turn away single parents or same sex couples. Furthermore, there is a general protectionist viewpoint the entities such as the Commission for the Rights of the Child have noted within the government of Zimbabwe and its arms (that stands against LGBTI persons) are detrimental to i). inclusion of LGBTI children; ii). The right to the founding of a family; and iii). Access and service provision to children of LGBTI persons.¹⁶

During the community and key informant consultations, it was made very clear that children and young people who identify as LGBTI are prone to stigmatisation to the extent that they often drop out of school or run away from home. This limits their capacity to develop. As such, many often resort to transactional

¹³ <https://www.humandignitytrust.org/country-profile/zimbabwe/>

¹⁴ *Ibid.*

¹⁵ *Ibid*; <http://www.refugeelaidinformation.org/zimbabwe-lgbti-resources#:~:text=Zimbabwe's%20new%20constitution%2C%20signed%20into,prohibited%20from%20marrying%20each%20other'>.

¹⁶ See CRIN Zimbabwe: *Children's Rights references in the universal periodic review 2016.*

sex, or entering into and staying in abusive relationships in order to provide for their basic needs.¹⁷ As the government of Zimbabwe holds a negative stance towards LGBTI persons, such children rarely seek (or have access to) state social protections.¹⁸

Decriminalisation of consensual same-sex activity

sex between men is illegal in Zimbabwe, in terms of the section 73 of the Criminal Law (Codification and Reform) Act (the law is silent regarding sex between women).¹⁹ In terms of Section 73, any male persons who engage in consensual sexual intercourse involving anal penetration or any act involving physical contact, other than anal penetration, that would be regarded to be an indecent act shall be guilty of sodomy. Where a male person performs anal sexual intercourse with, or commits an indecent act upon a young male person who is 12 years or above but below the age of 16 years, with the consent of such young male person, shall be guilty of performing an indecent act with a young person. The section can be interpreted as prohibiting most types of physical contact between male persons such as kissing, holding hands, cuddling or hugging in an intimate manner and is thus largely perceived by society as prohibiting homosexuality rather than merely prohibiting sex between men.

Prosecutions based on these provisions have proven to be rare. However, the continued criminalization of same-sex relations has created a hostile environment against LGBTI people, where the threat of actioning the provision is used to scare or frighten the community into silence. This criminalisation of LGBTI relations has been coupled with societal influencers like the highly conservative religions, which largely influence the narrative of the Zimbabwean community. The combination of the two has left the LGBTI community more vulnerable in a number of ways, such as their accesses to health care services and justice being limited in the belief that queer relations are sinful and illegal, and are unworthy to receive any social support, regardless of whether the issue at hand has to do with the individuals SOGI identity or not.

In addition, criminalisation of same relation has gone to have effects on the mental wellbeing of the LGBTI community- giving rise to suicidal behaviours, states of depression and anxiety, and drug and substance abuse amongst others. Due to both the criminalisation of same sex marriage, and the force of conservative societal norms, LGBTI community members have been forced to live double lives. The double lives phenomenon has manifested it's in form of community members being in relationships with people they are not attracted to for the sake of being "societal correct" and also to be on the correct

¹⁷Southern Africa Litigation Centre (SALC), Access to Justice for Healthcare Violations: Background Document, 2017; available at <http://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Background-document-4.0.pdf> (accessed June 2018).

¹⁸ *Ibid.*

¹⁹ Chapter 9:23 of 2004

side of the law. This has been shown, in other contexts, to give rise to individuals plagued with mental wellbeing issues, and unhappy marriages and family structures.

Criminalisation of sex work has also served as a bar to LGBTI individuals earning an income from one of the few avenues that is not limited to them on the basis of educational qualification. It has also meant that there are higher incidence levels of STIs, stigma, and SGBV that goes unaddressed amongst LGBTI sex workers in comparison to the broader sex worker community.

Trans and intersex specific issues

Trans and intersex individuals have faced numerous challenges that might be viewed as unique to the rest of the SOGI minority community. Gender markers have been an issue that needs to be addressed imminently in basic public and private sector documentation forms and information systems. It is crucial to note that gender markers bias has been an indication that Transgender and Intersex people have been deemed to have no place in the society which explains the high level of stigma and discrimination they face. There is currently no legislation regarding change of gender identity and transgender people are not legally acknowledged. As a result, the trans and intersex community were reporting that they experienced instances of harassment by uniformed officials as their identification documentation varied from their expressed gender.

Trans and intersex individuals are currently lacking identity documentation aligned to their preferred gender, trans-diverse persons experience extreme discrimination at school, at church, and in other social settings at the hands of their peers who are ignorant of and uncomfortable with their gender identity²⁰. Transgender persons also face heavy active discrimination from family and church leaders – many of whom are likely to sexually molest many trans diverse individuals their experience finally drives trans diverse people out of school before completion of their studies, and also out of home (another key site of sexual abuse); Trans diverse people are at a permanent disadvantage against former peers in seeking work in that we are underage, underqualified, can't progress further in their studies, and cannot secure basic documents such as a driver's license.

Due to the challenges that are faced by Trans people in Zimbabwe, the survey that Transmart conducted brought forward the following findings:²¹

1. Access to Health:

²⁰ <http://www.aidsaccountability.org/wp-content/uploads/2017/02/Trans-SIT-Analysis.pdf>

²¹ <https://drive.google.com/file/d/1GzjaCNmIDpse9qmLLHIJGfKXAWNaf4jX/view>

Transgender persons have fear when it comes to health access, the study has proven that 79.4% of Transgender people fear accessing health care services in government facilities and even private institutes.

2. Mental Health:

79.4% of transgender people suffer or go through depression and isolation which is fuelled by stigma and discrimination. In spite of this 50.2% of transgender people have had suicidal thoughts hence influencing the extent of challenges that Transgender people face.

3. Access to legal documents

Transgender and Intersex people usually have national identification documentation (birth certificates, passports, and national IDs) that do not reflect their lived/ preferred sex and/ or gender.²² As such, they are often victimised and indeed barred from accessing a wide range of services, particularly if they have begun transitions, and their appearance does not correspond to the names and sex markers on their issued documents. A recent report by the Zimbabwe Human rights commission highlighted this issue, and recommended that the government of Zimbabwe institute steps to create systems that allow for a process for change of sex markers on national documentation.²³

In addition, stigma and discrimination has also been exacerbated by the current governmental COVID 19 lockdown regulations which have seen the mounting of road blocks on major roads to the CBD at which citizens are asked to produce their identity documents. In such incidents transgender individuals have faced massive homophobic slurs and attacks as their identity documents won't be matching with their physical looks.

Hate Crimes and Physical Violence against LGBTI persons

The issue of speech, crimes, and physical violence motivated by hate against LGBTI person in Zimbabwe, is one component that has even instilled homophobia emanating from the society at large

²² The Southern Africa Litigation Centre noted in its report dated 27 September 2016 that: 'There are no laws or policies that provide for hormonal treatment or any other gender-affirming healthcare for transgender people. Transgender people who want to access hormonal treatment usually look to the black market or travel outside Zimbabwe – mainly to South Africa – to access this medication.' (Southern Africa Litigation Centre, Laws and Policies Affecting Transgender Persons in Southern Africa, p51, 27 September 2016 <http://www.southernafricalitigationcentre.org/1/wpcontent/uploads/2016/09/Transgender-rights-in-Zimbabwe.pdf>).

²³ Zimbabwe Human Rights Commission *Report on: National Inquiry on access to Documentation in Zimbabwe 2020*.

against LGBTI persons in Zimbabwe.²⁴ A recent exemplification of this is with regards to the #ZimbabweanLivesMatter digital campaign. There was much support of foreign nationals and personalities (by Zimbabweans) who echo this campaign on their platform. When the openly gay, South African media personality, Lasizwe, added his voice in solidarity with the #ZimbabweanLivesMatter campaign, he received very homophobic comments in return. This reflects two situations in Zimbabwe: the exclusion of LGBTI persons from involvement in other intersecting issues and movement; and ii). The impact of the absence of hate crimes and speech legislation in Zimbabwe that breeds impunity with regards to openly derogatory speech and behaviour against LGBTI persons.

To date, Zimbabwe lacks any legislation or conversation on hate crimes, and hate speech, particularly with regards to LGBTI people. This situation can, in part, be attributed to the lack of specific protection of LGBTI in the constitution. Furthermore, Constitutional and state entities such as the Zimbabwe Commission for Human Rights, are not mandated to look into issues of “hate crimes or speech”, as there is no clear definition at law with regards to these. At most, legal recourse can be sought at civil law for defamation of character *viz-a-viz* referring to a person as a homosexual.²⁵ At criminal law, individuals have been prosecuted for *lese majesty* offence of “undermining the authority of or insulting the president”.²⁶ This is problematic in that it serves to further stigmatise LGBTI identities, rather than be a means through which an LGBTI person can receive the protection of the law from hate speech.

As such, hate crimes and speech have continued unabated in Zimbabwe. This is evidenced by the September 2018 incident at which, a teacher at a Harare school who came out as gay resigned after he received death threats from members of the public over his sexual orientation.²⁷ No individual who threatened the former deputy head was prosecuted or even castigated for threatening the wellbeing and life of the educator.

The lack of hate crime and speech protections has meant that even access to justice for LGBTI persons for legislated offences is limited as well. This is evidenced by a transgender woman, “Miriam”, who was raped in March 2020. Despite pursuing legal recourse, she subsequently dropped the charges against her perpetrator due to fear of more stigma and discrimination from the security forces. Women who

²⁴ The Citizen *Lasizwe stands with the Zimbabwe but receives Homophobic slurs in return* 2020 <https://citizen.co.za/lifestyle/2335424/lasizwe-stands-with-zimbabwe-but-receives-homophobic-slurs-in-return/>

²⁵ See comments and *ratio* by Judge Bere at para 19 of *Nathanson v Mteliso & Others*; See also DFAT *DFAT Report 2016* 2016.

²⁶ See *The Advocate MP in Zimbabwe Jailed for Alleging that Mugabe is Gay* 2011.

²⁷ CNN *Gay Zimbabwe Deputy Head teacher Resigns* 2018 <https://edition.cnn.com/2018/09/28/africa/gay-zimbabwe-deputy-head-teacher-resigns-intl/index.html> ; HRW *World Human Rights Report 2019* 2019 https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2019.pdf

identify as lesbian, bisexual, or queer, also report similar incidences, with (at times) perpetrators threatening to “out” them if they pursue legal action.²⁸

LGBTI Human Rights Defenders and Freedom of Assembly and Association

Though the human rights environment has improved with regards to LGBTI human rights defenders and CSOs, the current Zimbabwean human rights landscape is tense and this is evidenced by the recent clamp downs of protestors against the corruption and human rights violations perpetrated in the name of COVID 19 response restrictions. Generally, the right to demonstrate has usually been politicised or viewed as anti-government protests which has largely affected the already discriminated LGBTI serving organisations in terms of visibility. In that regard, the Maintenance of Peace and Order Act- MOPA- (which replaced the Public Order and Safety Act), has been the legislative vehicle through which the state has limited many public demonstrations and protests. It reconstitutes the conflation of public demonstrations and public meetings under the moniker of public gatherings. This ensures the police maintain their regulatory powers over assemblage of both a demonstrative and deliberative nature. This conflation also allows the risks normally associated with violent protests to be used as a basis for regulating public meetings. It increases the scope of government powers whilst restricting the exercise of fundamental freedoms. A truly reformist bill would have limited its scope to those public gatherings whose scope poses such a disturbance to ordinary daily activity that the police would need to assist with maintenance of public order. Maintaining this conflation sustains the undue encroachment by the government into the sphere of legitimate activities by its citizenry.

²⁸ Pakasipiti *Zimbabwe Parallel Report: Beijing +25 Review 2019/2020 2020*.