

ZIMBABWE

Civil Society Report on LGBTI Rights (Contribution to the List of Issues Prior to Reporting)

To be submitted for the adoption of the List of Issues Prior to Reporting of Zimbabwe
At the 130th session of the Human Rights Committee
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I. Introduction

a. Joining organisations

- Trans* Research Education, Advocacy & Training (TREAT) – (Sam G Ndlovu – treatorg22@gmail.com)
- Trans* and Intersex Rising Zimbabwe (Tinoashira Chikuni – tinoashira.chikuni@hotmail.com)
- Pow wow – (Leeroy Gumpo – leeroymkhokheli@gmail.com)
- Advocacy Research for Men in Zimbabwe – (Phathisani Sibanda – sibandaphathisani1994@gmail.com)
- Rise Above Women's Organization W – (Mary Aurdy Chard – maryaudrychard@gmail.com)
- Pakasipiti – (Patience Mandishona – pmandishona@gmail.com)
- Voice of the Voiceless – (Miles Moyo – miles.vovoby@gmail.com)
- Kiburi – (Nozipho Moyo – nmoyo@wdyoungleaders.org)
- Gays and Lesbians of Zimbabwe - (<http://www.galz.org/>)
- Neoteriq (Elvinah Phiri – elvinahphiri.neoteriq@gmail.com)
- Zimbabwe Human Lawyers (Prisca Dude – pdpriscadube6@gmail.com)
- Youth for Innovation Trust (Thando Gwinji- thando@youthforinnovation.com)
- Zimbabwe Men Against HIV and AIDS (ZIMAHA) – (Prosperity Ndlovu – propser.zimahachair@gmail.com)

The report Supported by:

Centre for Civil and Political Rights (CCPR)

Southern Africa Litigation Centre (SALC)

COSPE

b. Methodology

The methodology used to draft this submission was a consultative process which consisted of focus group discussions with community members, and civil society organisations which included but were not limited to LGBTI organisations. Two focus group discussions were held which comprised of an introduction to the UN International Convention on Civil and Political Rights (ICCPR), followed by a look at national laws and policies. The entire process was participatory and allowed the community to have a sense of ownership over the list of issues to be considered. How information was collected is depicted below:

1. Presentation on the UN Human rights treaty bodies, how they function and key issues affecting LGBTIQ persons that the committee should consider in their recommendations to states.
2. Participants were split into 3 working groups and asked to reflect and present questions.
3. Feedback from participants and reflective question, answers and input process.
4. Synthesis and report back to the group on key areas identified.

c. Contact details of the main coordinator of the report:

Trans* Research Education, Advocacy & Training (TREAT)

Dzoe Ahmad

Programmes Coordinator

+263778320545

dzoeamhad@gmail.com

II. Contribution to the List of Issues Before Reporting (LOIPR)

Discrimination

LGBTI persons in Zimbabwe experience a climate of intimidation, stigma and discrimination which may exclude them from society, public services and job opportunities. Numerous LGBTI persons have lost their jobs, been expelled from education or been evicted once their sexual orientation has been revealed.¹ During the discussions held with members of the LGBTI community in preparation of this report in July 2020, stigma and discrimination were highlighted as major issues 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 ²families. The authorities are also reported to commonly harass LGBTI persons on the grounds of indecency and public order offences.³

Access to Health Care

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 institutes⁴. Access to health care services has been a major obstacle for LGBTI identifying persons in Zimbabwe due to unsensitised health care workers⁵. The high level of stigma and discrimination in public health care facilities has seen health care workers publicly humiliating patients by sharing their health care issues with colleagues, for instance, during the focus group discussion, a participant raised the fact that a healthcare worker invited their colleague to come and witness a gay man with an anal lesion resulting from a sexually transmitted infection. Under section 56, the constitution of Zimbabwe states: "All persons are equal before the law and have the right to equal protection and benefit of the law." However, in other instances, healthcare workers have asked insensitive questions with regards to the identity documentation of the patient not matching with their looks of transgender individuals. Because the law is silent on transgender rights, there is no provision for trans people to change their gender marker on their birth certificates, leaving them open to accusations of having same-sex relationships. Such a hostile environment has resulted in members of the LGBTI to shun away from public health care facilities. This result in members of the LGBTI community not seeking medical care when required to do so.

Politicians, traditional leaders, and religious leaders have also publicly rejected LGBTI people. Senior figures in the government, particularly former President Robert Mugabe, used anti-LGBTI rhetoric in public addresses. For example, during his intervention in September 2015, former President Mugabe declared to the UN General Assembly: *"We equally reject attempts to prescribe 'new rights' that are contrary to our values, norms, traditions, and beliefs. We are not gays*⁶. However, during the Harmonised elections in July 2018, a leading gay rights group (Gays And Lesbian of Zimbabwe).GALZ

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775001/CPIN- ZIM - SOGIE. V4.0e Jan 2019 .pdf

² <https://www.dandc.eu/en/article/homophobia-zimbabwe-hurts-mental-health-lgbti-people>

³ Idem.

⁴ <https://mailchi.mp/431df42a3004/re-trans-smart-trust-press-statement-on-the-national-trans-research-un-spotlight-report>

⁵<https://www.voazimbabwe.com/a/zimbabwe-trans-people-gender/4629076.html>

⁶ <https://www.humandignitytrust.org/country-profile/zimbabwe/>

was appointed as 2018 Election Observer. This progressive appointment saw a decline in the use of hate speech and harassment of the LGBT community, compared to past election periods.⁷

Mental Health

79.4% of transgender people suffer or go through depression and isolation which is fuelled by stigma and discrimination. It has been reported that 50.2% of transgender people have had suicidal thoughts hence influencing the extent of challenges that Transgender people face⁸.

The stigma and discrimination have also been exacerbated by the current governmental COVID 19 lockdown regulations which have seen the mounting of roadblocks 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 when their identity documents do not match their physical looks. This information was captured on the National Focus Group discussion. Members of the Trans community highlighted this issue from their experiences.

Same-Sex Marriages

The Zimbabwean Constitution signed into law by President Mugabe in May 2013, prohibits gay marriage. It states that 'Persons of the same sex are prohibited from marrying each other'. Specifically prohibits same-sex marriages, this prevents gay men and lesbians from fully expressing their sexual orientation. However, at the same time, the Constitution guarantees rights to non-discrimination, privacy, and freedom of expression.⁹

Adoption

The LGBTI identifying persons have also been discriminated their rights to adopt children. According to Child ACT section 58, subsection 1(v) *a person cannot adopt a child with a sex that is opposite to theirs unless they do so jointly (i.e with their spouse)*. The provision discriminates against LGBTI people on the basis that LGBTI persons cannot adopt the same-sex child, due to the prohibition of same-sex relations.

i. Decriminalisation of consensual same-sex activity

The criminalisation of same-sex is one of the key issues that should be highlighted by the Human Rights Committee in the LOIPR for Zimbabwe.¹⁰ Same-sex sexual relations between men (referred to as sodomy in Zimbabwe) are criminalised under Section 73 of the Criminal Law Act of 2006.¹¹ The Criminal Law Act criminalises all sexual acts between men with a maximum penalty of one-year imprisonment and the possibility of a fine. which states that « *Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act, shall be guilty of sodomy and liable to a fine up to or*

⁷ Idem.

⁸ <https://equal-eyes.org/database/2020/7/2/trans-inclusion-in-the-development-framework-of-zimbabwe>

⁹ <http://www.refugeelegalaidinformation.org/zimbabwe-lgbti-resources#:~:text=Zimbabwe's%20new%20constitution%2C%20signed%20into,prohibited%20from%20marrying%20each%20other'>

¹⁰ <https://www.humandignitytrust.org/country-profile/zimbabwe/>

¹¹ <https://www.humandignitytrust.org/country-profile/zimbabwe/>

exceeding level fourteen or imprisonment for a period not exceeding one year or both. '(2) Subject to subsection (3), both parties to the performance of an act referred to in subsection (1) may be charged with and convicted of sodomy. '(3) For the avoidance of doubt it is declared that the competent charge against a male person who performs anal sexual intercourse with or commits an indecent act upon a young male person – '(a) who is below the age of twelve years, shall be aggravated indecent assault or indecent assault, as the case may be; »¹²

Criminalization of same-sex relations creates a hostile environment for LGBTI people. This factor coupled with religion, which still views homosexuality as a sin, further exacerbates the problem.

In addition, criminalisation of same-sex relations ultimately has a severe negative effect on the mental health of the LGBTI community, which often results in depression, anxiety, substance abuse and suicidal behaviour. Lastly, laws and policies which are not LGBTI inclusive, further exacerbate the problem.

ii. Trans and intersex specific issues

Trans and intersex individuals have faced numerous challenges, the lack of accurate and timely data on trans identities and intersex persons makes them “invisible” and exacerbates their vulnerability. The issue of Gender markers continues to be an issue for the transgender community. For as long as gender markers are disregarded, the transgender and intersex community continue to be side-lined and made to feel like they have no place in society, which contributes to the existing stigma and discrimination they already face. which explains the high level of stigma and discrimination faced. There is currently no legislation regarding gender identity and transgender people are not legally acknowledged.

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 identity¹³. Transgender persons also face discrimination from family and church leaders. Many transgender persons have reported being sexually abused by family members.¹⁴ Trans diverse people are also disadvantaged when seeking work due to the societal stigma associated with being trans. A significant minority of the few that do manage to secure work, are likely to experience sexual harassment at work, this information was captured from the National Focus Group discussion in drafting this report.

Due to the challenges that are faced by Trans people in Zimbabwe, the survey¹⁵ that Tran smart conducted brought forward the following findings in terms of these various segments. In terms of:

¹²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775001/CPIN- ZIM - SOGIE. V4.0e Jan 2019 .pdf

¹³ <http://www.aidsaccountability.org/wp-content/uploads/2017/02/Trans-SIT-Analysis.pdf>

¹⁴ <https://accountability.international/wp-content/uploads/2019/02/Trans-SIT-Analysis.pdf>

¹⁵ <https://drive.google.com/file/d/1GzjaCNmIDpse9qmLLHIJGfKXAWNaf4jX/view>

Hate Crimes and Physical Violence against LGBTI persons

On 5 August 2020, Thulasizwe “Lasizwe” Dambuza, a young gay man from South Africa stood in Solidarity with the people of Zimbabwe, instead of showing appreciation for the support, the Zimbabwean public chose to instead attack Thulasizwe based on his sexual orientation.¹⁶

Also, hate crimes have continued unabated in Zimbabwe and this is evidenced by the September 2018 incident at which, ¹⁷a 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.¹⁸ Also, violence against the LGBTI community has continued without any justice served. This is evidenced by a Transgender woman who, was raped in March 2020 and dropped charges due to fear of more stigma and discrimination from the security forces, up to date there hasn’t been a follow-up.¹⁹

LGBTI Human Rights Defenders and Freedom of Assembly and Association

The current Zimbabwean human rights landscape is tense and this is evidenced by the recent clampdowns 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 have largely affected the already discriminated LGBTI serving organisations in terms of visibility. In that regard, the government of Zimbabwe recently enacted the Maintenance of Peace and Order²⁰ (MOPA) which regulates people’s rights to protest. Section 2 of MOPA speaks, on most provisions that rehash that of the Public Order and Security Act (POSA). 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 the 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.

Progress on LGBTI issues in Zimbabwe

Though the State has done little to address stigma and discrimination, notable progress should 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, this process is being supported the Global Fund under HIV project for Key Populations. It is also important to note the Ricky Nathanson case.²¹ The significant High Court decision came after Ms Nathanson

¹⁶ <https://www.timeslive.co.za/tshisa-live/tshisa-live/2020-08-05-lasizwe-tried-to-stand-with-zim-but-got-homophobic-responses-instead/>.

¹⁷ <https://edition.cnn.com/2018/09/28/africa/gay-zimbabwe-deputy-head-teacher-resigns-intl/index.html>

¹⁸ https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2019.pdf

¹⁹ Information obtained from a local trans woman in Zimbabwe.

²⁰ <https://www.hrforumzim.org/publications/an-analysis-of-the-maintenance-of-peace-and-order-bill-2019/>

²¹ <https://zimlii.org/zw/judgment/bulawayo-high-court/2019/135>.

the transgender activist sued the police for unlawful arrest, detention, malicious prosecution and emotional distress in 2014. In January of that year, she was arrested by six riot police officers on charges of a criminal nuisance for wearing female clothes and using a female toilet. She was forced to undergo invasive and humiliation medical/physical examination and asked to remove her clothes in front of five male police officers to “verify her gender”.²² In 2019, Ms Nathanson won the case. The judgement addresses the equal protection of LGBTI identifying persons. More so, the case raised issues regarding minority rights in Zimbabwe.

²² <https://www.southernafrialitigationcentre.org/2019/11/18/breaking-news-zimbabwe-high-court-awards-damages-in-ground-breaking-judgment-in-favour-of-ricky-nat>

Suggestion for the questions to be asked in the LOIPR to Zimbabwe:

Discrimination against LGBTI

- 1) What steps is the government of Zimbabwe taking to reduce stigma and discrimination of LGBTI people?
- 2) What measures has the Government put in place to educate health care workers on LGBTI issues?

De-criminalization of consensual same-sex activity

- 1) The President of Zimbabwe, on his inaugural visit to the World Economic Forum in Davos, Switzerland in 2018 assured the world of a government tolerant of diversity encouraging LGBTI activist to "canvas" for their rights. Given the shrinking civil society space in Zimbabwe, particularly during the lockdown, can the president of Zimbabwe guarantee the safety of human rights activists, particularly those that advance apolitical objectives?
- 2) Has the Government of Zimbabwe (GoZ) made any key considerations of reviewing its Sodomy Law and would it consider setting up a consultative/operational committee to steer reforms to its current Sodomy Law?

Trans and intersex specific issues

- 1) What is the state doing to realign its policies and practises in light of case law to promote the rights of Zimbabwean who identify as Trans and Intersex, in particular, the Criminal Codification Act on public indecency?
- 2) How is the state working towards gender marker change and documentation that promotes the Zimbabwean who identify as Trans and intersex where their birth sex does not align with their preferred or adult biological sex or identity?
- 3) What steps is the State taking to educate citizens on the transgender community?

Hate crime and physical violence against LGBTI persons

- 1) Members of the LGBTI community still experience secondary victimization at the law enforcement level and various barriers in accessing timely justice and redress. What are the government's stance and policy position with regards to availing adequate justice and preventing a further violation of LGBTI community by various levels of the justice and law enforcement systems?
- 2) What mechanisms does the government or state have in place for Zimbabwean LGBTI community to report and receive support with regards to sexual and gender-based violence, hate crimes and speech, and other forms of physical violence?

LGBTI Human Rights defenders and freedom of assembly and association

- 1) The GoZ is on record of having met with a selection of LGBTI activist organizations. How committed is government towards engaging CSO's and community organizations working with LGBTI organizations beyond just health programming?
- 2) What is the state doing to promote the rights for human rights defender with regards to protest, freedom of assembly, freedom of association particularly in light with the Covid-19, Civil Society Organization that serves the LGBTI community to formal register and support the state?