Immigration and Refugee Board of Canada

Responses to Information Requests

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ZWE105806.E

Zimbabwe: Situation of sexual minorities, including legislation; treatment by society and authorities; state protection and support services available to victims of violence (2014-May 2017)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Legislation
1.1 Homosexuality and Same-Sex Sexual Acts

The travel advice of the Government of Canada indicates that same-sex sexual acts are illegal in Zimbabwe (Canada 2 May 2017). However, the International Lesbian, Gay, Bisexual, Trans and Intersex Association's (ILGA) State-Sponsored Homophobia report for 2016 identifies Zimbabwe as a country in which "[m]ale-identified individuals who have same-sex sexual relations with another male are criminalized" (ILGA May 2016, 56, 93). Voice of America (VOA) reports that "it is not technically illegal to be gay in Zimbabwe, [but] it is illegal to act on it" (VOA 12 Jan. 2017). The same source further cites a gay rights activist in Zimbabwe, Mojalifa Mokwele, as stating that "there is no law that states that one cannot be gay. It only becomes a crime once you start committing homosexual acts in public"… "If you take a look at the constitution in Zimbabwe, it is not a crime to stand in the streets and publicly state that he or she is homosexual. It is not illegal to be gay in Zimbabwe. Being homosexual is only regarded criminal in Zimbabwe once you publicly commit homosexual acts." (VOA 12 Jan. 2017)

The US Department of State's travel advisory for Zimbabwe indicates that "[c]onsensual sex between men is criminalized in Zimbabwe, with both parties subject to fines of US$5,000 or a year imprisonment or both" (US 1 Aug. 2016). Freedom House's Freedom in the World 2016 report similarly states that "sex between men is a criminal offense and can be punished with a fine and up to one year in prison" (Freedom House 2016). The 2004 Criminal Law (Codification and Reform) Act provides the following:

73 Sodomy

1. 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 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; or

b. who is of or above the age of twelve years but below the age of sixteen years and without the consent of such young male person, shall be aggravated indecent assault or indecent assault, as the case may be; or

c. who is of or above the age of twelve years but below the age of sixteen years and with the consent of such young male person, shall be performing an indecent act with a young person. (Zimbabwe 2004)

VOA reports that the phrase "would be regarded by a reasonable person as an indecent act" in the Criminal Law (Codification and Reform) Act could include actions such as "two men holding hands, hugging or kissing and could carry an extended prison term" (VOA 12 Jan. 2017).

The US Department of State's Country Reports on Human Rights Practices for 2016 states that "there were no known cases of prosecutions of consensual same-sex sexual activity" in 2016 (US 3 Mar. 2017, 44). However, without providing further detail, Gays and Lesbians of Zimbabwe (GALZ), an LGBTI rights organization in Zimbabwe that "carries out a range of programming designed to meet the varied needs of the LGBTI population in Zimbabwe [and] advocacy for the recognition and defence of LGBTI rights" (OSISA n.d.), reports in its Universal Periodic Review (UPR) submission for the 2016 review that "[t]here are documented cases of arrests based directly on Section 73 - both under charges of sodomy and indecent aggravated assault" (GALZ 2016, 3).

The ILGA report identifies Zimbabwe as a country in which "female-identified individuals are not criminalized by the existing penal law" (ILGA May 2016, 56, 93, bold in original). The US travel advisory for Zimbabwe notes that "while there is no explicit legal prohibition against sexual relations between women, societal violence and harassment against LGBTI individuals is pervasive" (US 1 Aug. 2016). In a report on laws applying to LGBT individuals in selected Southern African countries, OutRight Action International, "an international LGBTIQ organization" that "seeks to advance human rights and opportunities for LGBTIQ people around the world" (OutRight Action International n.d.), similarly states that in Zimbabwe "[a]lthough the [Criminal Law (Codification and Reform) Act] does not explicitly extend to homosexual women, in practice lesbians are subjected to the same victimization, censure and police harassment as gay men" (OutRight Action International 16 Mar. 2016, fn. 211).

1.2 Same-Sex Marriage

The US travel advisory for Zimbabwe states that "[t]he constitution of Zimbabwe outlaws marriage between people of the same gender" (US 1 Aug. 2016). The Constitution of Zimbabwe Amendment (No. 20) Act, 2013 provides:

78 Marriage Rights

1. Every person who has attained the age of eighteen years has the right to found a family.

2. No person may be compelled to enter into marriage against their will.

3. Persons of the same sex are prohibited from marrying each other. (Zimbabwe 2013)

1.3 Anti-Discrimination

The UK's Human Rights and Democracy Report 2015 states that in Zimbabwe, "LGB&T rights are not protected under the Constitution" (UK 21 Apr. 2016). The US Country Reports 2016 similarly indicates that "[t]he constitution does not prohibit discrimination based on sexual orientation and gender identity" (US 3 Mar. 2017, 44). A 2012 VOA interview with Dr. Alex Magaisa, an expert adviser to the Parliamentary Select Committee that was responsible for drafting the constitution, cites Dr. Magaisa as stating that "there is no positive clause, which protects gay rights in Zimbabwe" in the final draft of the Constitution’s Bill of Rights (VOA 24 July 2012). The same source reports that Dr. Magaisa further explained that phrases such as "circumstances of birth" and "any other status" had been included in previous versions of the non-discrimination clause as grounds for non-discrimination, but had been removed at the behest of an "anti-gay lobby," which feared the phrases provided a way to bring gay rights in the Constitution (VOA 24 July 2012).

The Constitution of Zimbabwe Amendment (No. 20) Act, 2013 provides the following:

56 Equality and non-discrimination

1. All persons are equal before the law and have the right to equal protection and benefit of the law.
2. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

3. 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. (Zimbabwe 2013)

2. Treatment

2.1 Treatment by Society

According to the 2016 UPR submission by GALZ, "[h]omophobia permeates Zimbabwean society unchecked and manifests itself in different forms, ranging from verbal and physical assault, to discrimination of LGBTI people on the basis of their sexual orientation or gender identity" (GALZ 2016, 1). The 2014 annual report of the Zimbabwe Human Rights NGO Forum, "a coalition of twenty-one human rights NGOs in Zimbabwe" that aims "[t]o provide leadership and coordination on the Human Rights Agenda in Zimbabwe" (Zimbabwe Human Rights NGO Forum n.d.), reports that six cases of human rights violations targeting the LGBTI/MSM/WSW [Men who have Sex with Men/Women who have Sex with Women] [were recorded] for the period between April and June. These cases varied from unfair labour practices, assault, blackmail, gay bashing, illegal arrest and detention and other related cases (Zimbabwe Human Rights NGO Forum 10 Feb. 2015, 22).

An interview in The Standard, a Sunday newspaper based in Zimbabwe, cites GALZ Director Chester [Chesterfield] Samba as stating that extortion with impunity against LGBTI individuals in Zimbabwe has been documented on both a state-based and privatised level. Extortion has taken the form of demands for money, personal belongings, or other valuables in order to keep the blackmailer silent. LGBTI individuals often succumb to such extortions due to fear of being discriminated against, being disowned by their family, or being faced with the possibility of criminal charges due to Section 73 or other relevant laws which discriminate against LGBTI people. (The Standard 27 Nov. 2016)

Samba was further cited as stating that "[n]umerous" LGBTI persons have reported having their employment terminated or being evicted after employers or landlords learned of their sexual orientation (The Standard 27 Nov. 2016).

The US Department of State's Country Reports on Human Rights Practices for 2015 states that "[r]eligious leaders in this traditionally conservative and Christian society encouraged discrimination against LGBTI persons" (US 13 Apr. 2016, 42). Gay Star News, an online "24-7 LGBT news service" (Gay Star News 5 Oct. 2012), reported in April 2014 that in a sermon to 50,000 followers, Emmanuel Makandiwa, the leader of the United Family International Church (UFIC), "branded gay people to be tools of the devil" and cited him as "pronouncing gays to be "mentally sick"" (Gay Star News 2 Apr. 2014). US Country Reports 2015 cites Walter Magaya, the leader of the Healing and Deliverance Ministries in Zimbabwe as stating in March 2015 that "gays and lesbians were 'spiritually afflicted and just like all spirits, they need deliverance'" (US 13 Apr. 2016, 42). US Country Reports 2016 reports that Magaya "continued to host radio and television shows where he 'healed' members of the LGBTI community" in 2016 (US 3 Mar. 2017, 44).

A joint submission by the Sexual Rights Centre (SRC) [1], GALZ, and COC Nederland [2] to Zimbabwe's UPR for 2016 reports that "LBT [Lesbian, Bisexual, and Transgender] women are particularly at risk of sexual violence in the form of 'corrective' or 'curative' rape, in which family members rape a woman who is thought to be a lesbian based on the erroneous belief that doing so can 'cure' her sexuality" (SRC et al. Oct. 2016, 9). The US Country Reports 2016 similarly states that "[i]n response to social pressure, some families reportedly subjected their LGBTI members to 'corrective' rape and forced marriages to encourage heterosexual conduct. Women in particular were subjected to rape by male family members" (US 3 Mar. 2017, 44-45).

The US Country Reports 2016 indicates that "LGBTI persons often left school at an early age due to discrimination. Higher education institutions reportedly threatened to expel students based on their sexual orientation" (US 3 Mar. 2017, 45). Similarly, an interview with GALZ director Samba in The Standard cites Samba as stating that "LGBTI persons in Zimbabwe have reported expulsions due to their gender identity at both secondary and tertiary education levels; even without expulsion, many LGBTI individuals withdraw from school at an early age due to the effects of discrimination" (The Standard 27 Nov. 2016).

2.1.1 Health Care
According to GALZ, LGBTI persons in Zimbabwe "have found themselves treated poorly when using public health institutions" which made it difficult to "seek and receive health care at the same level as heterosexual and cisgender individuals" (GALZ 2016, 9). The US Country Reports 2016 indicates that many persons who identified themselves as LGBTI did not seek medical care for sexually transmitted diseases or other health problems due to fear that health-care providers would shun them or report them to authorities. Since the completion of a nation-wide sensitization program for health-care workers, however, the LGBTI community reported an improvement in health service delivery. (US 3 Mar. 2017, 54).

A May 2016 interview by an AllAfrica correspondent with GALZ programmes manager Samuel Matsikure cites Matsikure as stating that "there is better acceptance of men who have sex with men and transgender persons within some healthcare facilities where healthcare workers have been sensitised. This has increased uptake of services, although more awareness-raising within the LGBTI community and public still needs to be done." (AllAfrica 13 May 2016)

2.2 Treatment by Authorities

Freedom House's Freedom in the World 2016 states that "LGBT … groups have been subject to regular harassment by security forces" (Freedom House 2016). The joint submission to the UPR 2016 by SRC, GALZ and COC Nederland reports that during focus group discussions with sex workers, gay/bisexual men, lesbian/bisexual women, and transgender individuals, that were held to gather information for the UPR submission, LGBTI individuals, and in particular, transgender women and men, highlighted how arbitrary detention and torture at the hands of law enforcement officials were frequent and harmful. In one case, a transgender woman, who had been arbitrarily detained for three days for having used a female bathroom, was stripped in front of four police officers, verbally mocked and degraded, and paraded around for the amusement of the police officers on duty. A number of LGBTI individuals have reported cases of police abuse, including being doused in cold water, verbally abused, and threatened with arms. (SRC et al. Oct. 2016, 5)

According to the US Country Reports 2016, "[t]he police reportedly detained and held persons suspected of being gay for up to 48 hours before releasing them. LGBTI advocacy groups also reported police used extortion and threats to intimidate persons based on their sexual orientation" (US 3 Mar. 2017, 44).

The GALZ UPR submission for 2016 states that "LGBTI individuals are frequently beaten, mocked, and forced to pay bribes in order to escape custody" (GALZ 2016, 4), and that "in the last few years, there have been multiple reported instances where LGBTI individuals in Zimbabwe have been physically assaulted by police officers while in police custody" (GALZ 2016, 7).

SW Radio Africa, an opposition radio station that closed in August 2014 (BBC 11 Aug. 2014), reports that "entrepreneur and transgender activist," Ricky Nathanson, was charged with "criminal nuisance" in January 2014 after having allegedly entered a toilet in the ladies' washroom, but was acquitted by a magistrate who ruled that the prosecution had "failed to prove a crime"(SW Radio Africa 6 Feb. 2014). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Freedom House reports that in October 2015, "the Labour Court ruled in favor of a civil servant who was unfairly dismissed on the grounds of his presumed sexual orientation" (Freedom House 2016). VOA notes that the plaintiff, Raymond Sibanda, was arrested for "allegedly performing an indecent act in a public place," when he attended a Christmas Party hosted by GALZ, which was raided by police in 2013 (VOA 27 Oct. 2015). Sources further report that the Labour Court president Justice Evangelista Kabasa ruled that no person should be fired "on the basis of their sexual orientation" (VOA 27 Oct. 2015; Gay Star News 27 Oct. 2015).

2.3 Government Attitudes

Freedom House states that President Robert Mugabe "has been vocal in his opposition to same-sex sexual relations" (Freedom House 2016). The US Country Reports 2016 similarly states that "President Mugabe and ZANU-PF leaders publicly criticized the LGBTI community, rejecting the promotion of LGBTI rights as contrary to the country's values, norms, traditions, and beliefs" (US 3 Mar. 2017, 44). The OutRight Action International report on laws affecting LGBT rights in selected southern African countries states that in Zimbabwe "[a]s a result of the harsh laws and public denunciation, particularly by President Robert Mugabe, members of the LGBTI community are routinely stigmatized, discriminated against, denied access to services and benefits and subjected to assault and harassment" (OutRight Action International 16 Mar. 2016).

Sources report that in February 2016, during a speech given as part of his birthday celebrations, Mugabe refused aid for an ongoing severe drought in the country if it came with the condition of accepting gay rights
AMSHeR's materials for the ICASA conference were delayed at the border, and that its information booth was "temporarily shut down by internal security personnel" (AMSHeR 2016, 11). Authorities later allowed "exhibitors" to display their materials after human rights groups lobbied and protested the Zimbabwe Revenue Authority (Zimra) (same source cites the AMSHeR executive director as stating that "most of their material" was confiscated by the removals (conference in October 2015 that gay rights groups were welcome to participate in the International Conference against conducting demonstrations (Xinhua News Agency 15 Oct. 2015). However, on Aids and STI's in Africa (ICASA) from 29 November to 4 December 2015 [in Harare], but warned them of the charges were "dropped" by the magistrate (SW Radio Africa 28 Feb. 2014).

Sources report that in February 2014, GALZ chairperson Martha Tholanah was "acquitted" on charges of "running an unregistered organization" (Zimbabwe Human Rights NGO Forum 10 Feb. 2015, 17-18), or that experienced harassment and discrimination" (UK 12 Mar. 2015).

Sources report that in December 2014, a private party organized by GALZ was attacked by armed intruders, leaving 35 attendees injured (US 13 Apr. 2016, 42; Human Rights Watch 27 Jan. 2016, 5). According to Human Rights Watch, the police did not seriously investigate the incident or arrest any suspects (Human Rights Watch 27 Jan. 2016, 5).

The US Country Reports 2015 states that the SRC "reported minimal harassment" in 2015 (US 13 Apr. 2016, 42). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

A Xinhua News Agency article cites Zimbabwe's Health Minister David Parirenyatwa as stating at a press conference in October 2015 that gay rights groups were welcome to participate in the International Conference on Aids and STI's in Africa (ICASA) from 29 November to 4 December 2015 [in Harare], but warned them against conducting demonstrations (Xinhua News Agency 15 Oct. 2015). However, NewsDay, a daily newspaper in Zimbabwe, reports that at ICASA, the government "reportedly clamped down on foreign gays and lesbians" attending the conference (NewsDay 30 Nov. 2015). The same source indicates that the exhibition stand of African Men for Sexual Health and Rights (AMSHeR), a South African based "Pan-African coalition of MSM and LGBT-led organisations working to promote non-discrimination, particularly based on sexual orientation and gender identity (SOGI) and to advance access to quality health services for MSM/LGBT in Africa" (AMSHeR n.d.), was pulled down by "suspected State security agents" (NewsDay 30 Nov. 2015). The same source cites the AMSHeR executive director as stating that "most of their material" was confiscated by the Zimbabwe Revenue Authority (Zimra) (NewsDay 30 Nov. 2015). AMSHeR's Annual Report 2015 states that AMSHeR's materials for the ICASA conference were delayed at the border, and that its information booth was "temporarily shut down by internal security personnel" (AMSHeR 2016, 11). NewsDay further reports that authorities later allowed "exhibitors" to display their materials after human rights groups lobbied and protested the removals (NewsDay 30 Nov. 2015).

3. Recourse, State Protection, and Support Services

Information on recourse or state protection available to members of sexual minorities who are experienced violence or discrimination was scarce among the sources consulted by the Research Directorate.
within the time constraints of this Response. The joint submission by SRC, GALZ and COC Nederland reports that

[l]aw enforcement officials, healthcare service providers, and other institutions are reluctant to work with sexual minorities ... as a result of criminalization and prejudice. ... [S]exual minorities have little access to recourse when they are subjected to violence, rape, torture, or other forms of mistreatment and abuse at the hands of service providers and law enforcement officials. (SRC et al. Oct. 2016, 3)

3.1 NGO Support Services

Information on NGO support services for sexual minorities was scarce among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the GALZ website, GALZ provides a "Safety Net" program "to provide urgent relief to members in an emergency," and this includes providing "counselling, food and shelter for 72 hours" for members who have been evicted after their sexuality is discovered (GALZ n.d.a). The same source reports that GALZ also provides a "Skills for Life" program which aims to provide members with short vocational training courses to help them find employment and be more competitive in the workplace, so as to increase their role as an income generator and thereby lessen their chances of eviction by their family when their sexuality is discovered (GALZ n.d.a). A page entitled "Psychosocial Support" on the GALZ website further indicates that the GALZ Health Department has "trained professional counsellors [who] are skilled at providing assistance" including to those dealing with "extreme trauma, feelings of self-doubt...[and] real fears of being evicted from home, dismissed from work and being verbally and/or physically abused" (GALZ n.d.b). The Health Department further provides "pre- and post-test HIV/AIDS counselling" (GALZ n.d.b). Without providing further information, the GALZ website further indicates that they have "successfully provided legal assistance to many members who have been victims of state harassment or extortion" (GALZ n.d.c).

According to GALZ, as of 2004, there were nine GALZ "affinity groups" set up to "cater for members living outside of Harare" (GALZ n.d.d). The following groups had registered with GALZ as affinity groups:

Bulawayo – Melga, Prime Times
Chipinge – Harmony
Chitungwiza – Rainbow
Marondera – Eastlove
Masingo – Good Hope
Mutare – Eastern Networking
Penhalonga – The Edge
Victoria Falls – Mosi oya Tunya (GALZ n.d.d)

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] The Sexual Rights Centre (SRC), "a non-profit grassroots organization based in Bulawayo, Zimbabwe, dedicated to advancing the sexual, legal, social, and cultural rights of marginalized women, children and men" (Oxfam Canada n.d.).

[2] COC Nederland is an LGBT rights organization that advocates for "the decriminalization of sexual orientation and gender identity and for equal rights, emancipation and social acceptance of LGBT's in the Netherlands and all over the world" (COC Nederland n.d.).

References

AllAfrica. 13 May 2016. Tinashe Grateful Rufurwadzo. "Homophobia in Zimbabwe Prevents Access to HIV Services." (Factiva)
The Herald. 7 November 2016. Lloyd Gumbo. "Zimbabwe Resists Gay Rights Push." (Factiva)
The Sexual Rights Centre (SRC), Gays and Lesbians Association of Zimbabwe (GALZ), and COC Nederland. October 2016. "Universal Periodic Review of Zimbabwe 26th Session: Joint Submission by The Sexual Rights Centre, GALZ, and COC Nederland." [Accessed 10 May 2017]
The Standard. 27 November 2016. Blessed Mhlanga. "Zim Govt's Same-Sex Marriages Lie Exposed." (Factiva)
SW Radio Africa. 13 March 2014. Alex Bell. "Galz Volunteers Arrested over Media Training Workshop." (Factiva)
SW Radio Africa. 28 February 2014. Tichaona Sibanda. "Charges Against GALZ Chairperson Dropped." (Factiva)
Tips on how to use this search engine.

Additional Sources Consulted

**Internet sites, including:** Amnesty International; ecoli.net; EQUALDEX; Fédération internationale des ligues des droits de l'homme; GayLawNet; *The Guardian*; International Crisis Group; IRIN; UN – Refworld; Zimbabwe – Ministry of Health and Child Care.

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