

GALZ LGBTI RIGHTS VIOLATIONS REPORT 2011



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Any errors and omissions are ours alone.



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Glossary

Bisexual: a person who is attracted to both sexes.

Gay: a synonym for homosexual, sometimes used to refer to male homosexuals only.

Gender identity: a person's internal, deeply felt sense of being male or female, or something other than or in between male and female.

Heterosexual: a person who is primarily attracted to persons of the opposite sex.

Homosexual: a person who is primarily attracted to persons of his or her own sex.

Intersex: a person who possesses genital, chromosomal or hormonal characteristics which do not correspond to the given standard for 'male' or 'female' categories of sexual or reproductive anatomy.

Lesbian: a female primarily attracted to other females.

Sexual orientation: the way in which a person's sexual and emotional desires are directed. Sexual orientation (gay, straight, bisexual) describes whether a person is attracted primarily toward people of the same or opposite sex, or to both.

Straight: a synonym for heterosexual.

Transgendered or Transgender person: a person whose inner gender identity differs from the physical characteristics of his or her body at birth. Female-to-male transgender people were born with female bodies but have a predominantly male gender identity; male-to-female transgender people were born with male bodies but have a predominantly female gender identity. Transgendered persons either appear as, wish to be considered as, or undergo surgery to have their physical bodies conform to the gender identity of their inner self. This definition covers transsexual and transgender people, transvestites, cross dressers, no gender, liminal gender, multigender, and genderqueer people, as well as intersex and gender variant people.

Acronyms

AIPPA – Access to Information and Protection of Privacy Act

CIO – Central Intelligence Organisation

GALZ – Gays and Lesbians of Zimbabwe

IGLHRC- International Gay and Lesbian Human Rights Commission

LGBTI – lesbian, gay, bisexual, transgendered, intersex

MDC – Movement for Democratic Change

POSA – Public Order and Security Act

SRC – Sexual Rights Centre

ZANU-PF – Zimbabwe African National Union Patriotic Front

ZBH – Zimbabwe Broadcasting Holdings

ZCTU – Zimbabwe Congress of Trade Unions

ZDF – Zimbabwe Defence Forces

ZLHR – Zimbabwe Lawyers for Human Rights

ZPS – Zimbabwe Prison Service

ZRP – Zimbabwe Republic Police

Summary and overview

Violent acts and aggravated harassment of individuals suspected of being gay or lesbian are commonplace in Zimbabwe. Individuals who identify as lesbian, gay, bisexual, transgendered, or intersex (LGBTI) are driven from their homes through violence or threats of violence, forcing many to abandon their possessions and become internally displaced—or even seek refuge abroad—on account of their sexual orientation or gender identity

Zimbabwe's Criminal Law, which explicitly criminalises consensual anal sex between men and which contains ambiguous and over-broad provisions on sexual assault, is used to justify abuse against LGBTI individuals. Extortionists also use the existence of these provisions to demand money or goods in exchange of not releasing real or imagined details of an individual's private life to the public. In a context of entrenched stigmatization of LGBTI individuals, many feel compelled to hand over their possessions rather than risk the often violent wrath of families, friends, and neighbour.

Victims of abuse and harassment are often too scared to seek protection from the police. In many cases, police officers are themselves instigators of abuse, or contribute to it, either by carrying out extortion schemes, or by subjecting individuals suspected of being gay or lesbian to cruel, inhuman, and degrading treatment, including sexual assault, forced strip-searches, non-consensual medical treatment, and death-threats.

Those who work to defend the human rights of lesbian, gay, bisexual, transgender, and intersex individuals see their rights to freedom of expression and assembly routinely violated, often with reference to nationalism.

Political leaders not only condone these human rights abuses, but many celebrate them as part of Zimbabwean “culture.” High-level leaders, including President Robert Mugabe, repeatedly refuse to endorse the repeal of discriminatory legislation and, moreover, fuel public prejudice against LGBTI individuals through public statements that endorse abuse. In doing so, they ignore Zimbabwe's voluntarily undertaken international human rights obligations to protect the rights of everyone under Zimbabwe's jurisdiction without discrimination.

This situation could, to some extent, be remedied by the constitutional reform process initiated in 2011 as the result of the Global Political Agreement (GPA) that brought Zimbabwe's two main political parties together in an integrated government after the last—and very contentious—presidential elections. Through this process, the Zimbabwean parliament has the opportunity to bring the constitution into compliance with its international human rights obligations and explicitly prohibit discrimination on the basis of sexual orientation and gender identity.

So far, this potential has not been fulfilled, not least because high-level politicians from both major political parties, including President Robert Mugabe and the co-chairs of the Constitution Select Committee, publicly have opposed the inclusion of LGBTI protections in the new constitution.

Zimbabwe's failure to take action to stop human rights abuses against LGBTI individuals committed by state agents, to take measures to protect against abuses by state and private actors, and to protect and promote the ability of Zimbabweans to peacefully organise and assemble in defence of their human rights, violate its obligations as a state party to regional and international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the African Charter on Human and Peoples' Rights.

Gays and Lesbians of Zimbabwe (GALZ) calls upon Zimbabwe to live up to its international human rights obligations by including LGBTI representatives in the constitutional process; by explicitly prohibiting discrimination on the basis of sexual orientation and gender identity in the new constitution; by repealing all laws criminalising or punishing consensual adult sex, including between members of the same sex; and by investigating and punishing abuse and violence directed at individuals because of their real or perceived sexual orientation or gender identity. GALZ also calls on Zimbabwe's government to ensure that the criminal justice system is not used to target or harass LGBTI organizations, their staff, and the lawyers who represent and support them, and that these organizations, their staff, and lawyers can carry out their work in defence of human rights without fear of reprisal or intimidation.

Methodology

This report is based on information reported to Gays and Lesbians of Zimbabwe (GALZ) throughout 2011. GALZ has verified the reports through secondary interviews, checking court records, and gathering other corroborating evidence. The report was written by Chesterfield Samba and revised with financial and editorial support from the International Gay and Lesbian Human Rights Commission (IGLHRC).

All names of individuals have been changed to protect the safety and privacy of those interviewed. GALZ thanks the many courageous individuals who came forward to report the abuses they have suffered. Our organising and support work convinces us that the cases highlighted in this report constitute but the tip of the iceberg.

Legal Framework in Zimbabwe

Zimbabwe has a hybrid legal system with very few codified elements. In fact, the Criminal Law, which was last amended in 2004, is one of the few laws that is written down.

The Criminal Law explicitly prohibits consensual sex between adult men in its article 73 (“Sodomy”), providing for fines, prison of up to one year, or both, for adult men who engage in anal sex or “physical contact [...] that would be regarded by a reasonable person to be an indecent act.”

Article 73 reads:

Sodomy.

(1) Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or may 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.

The Criminal Law further contains several ambiguous provisions criminalising sex, such as article 66 (“Aggravated indecent assault”) and article 67 (“Indecent assault”).

Article 66 reads:

Aggravated indecent assault.

(1) Any person who

(a) being a male person

(i) commits upon a female person any act, other than sexual intercourse or anal sexual intercourse, involving the penetration of any part of the female person's body or of his own body; or

(ii) commits upon a male person anal intercourse or any other act involving the penetration of any part of the other male person's body or of his own body;

(b) being a female person

(i) has sexual intercourse with or commits upon a male person any other act involving the penetration of any part of the male person's body or of her own body; or

(ii) commits upon a female person any act involving the penetration of any part of the other female person's body or of her own body;
with indecent intent and knowing that the other person has not consented to it or realising that there is a real risk or possibility that the other person may not have consented to it, shall be guilty of aggravated indecent assault and liable to the same penalty as is provided for rape.

(2) For the purpose of determining the sentence to be imposed upon a person convicted of aggravated indecent assault, a court shall have regard to the same factors as are mentioned in connection with determining the sentence to be imposed upon a person convicted of rape in subsection (2) of section sixty-five, in addition to any other relevant factors and circumstances.

Article 67 reads:

Indecent assault.

(1) A person who

(a) being a male person

(i) commits upon a female person any act involving physical contact that would be regarded by a reasonable person to be an indecent act, other than sexual intercourse or anal sexual intercourse or other act involving the penetration of any part of the female person's body or of his own body; or

(ii) commits upon a male person any act involving physical contact that would be regarded by a reasonable person to be an indecent act, other than anal sexual intercourse or other act involving the penetration of any part of the male person's body or of his own body; or

(b) being a female person

(i) commits upon a male person any act involving physical contact that would be regarded by a reasonable person to be an indecent act, other than sexual intercourse or any other act involving the penetration of any part of the male person's body or of her own body; or

(ii) commits upon a female person any act involving physical contact that would be regarded by a reasonable

person to be an indecent act, other than any act involving the penetration of any part of the other female person's body or of her own body;

with indecent intent and knowing that the other person has not consented to it or realising that there is a real risk or possibility that the other person may not have consented to it, shall be guilty of indecent assault and liable to a fine not exceeding level seven or imprisonment for a period not exceeding two years or both.

(2) For the purpose of determining the sentence to be imposed upon a person convicted of indecent assault, a court shall have regard to the same factors as are mentioned in connection with determining the sentence to be imposed upon a person convicted of rape in subsection (2) of section sixty-five, in addition to any other relevant factors and circumstances.

(3) For the avoidance of doubt it is declared that where a person would be liable for contravening subsection (1) but for the fact that (a) physical contact was absent, the competent charge shall be criminal insult or, if the person intended but failed to engage in physical contact, attempted indecent assault; (b) indecent intent was absent, the competent charge shall be criminal insult.

Both of these articles criminalise sexual relations and contact (both same-sex and opposite-sex) where the potential perpetrators knows or realises that there is a “possibility that the other person may not have consented to it.” Article 69 (“Cases where consent absent or vitiated”) further criminalises sexual intercourse or other “indecent” acts obtained through fraud, threats, hypnosis, or intoxication, and places the full burden of proof on the accused to show that hypnosis, fraud, or intoxication was absent.

Article 69 reads:

Cases where consent absent or vitiated.

(1) Without limited Part XII of Chapter XIV, a person shall be deemed not to have consented to sexual intercourse or any other act that forms the subject of a charge of rape, aggravated indecent assault or indecent assault, where the person charged with the crime

- (a) uses violence or threats of violence or intimidation or unlawful pressure to induce the other person to submit; or
- (b) by means of a fraudulent misrepresentation induces the other person to believe that something other than sexual intercourse or an indecent act, as the case may be, is taking place; or
- © induces the other person to have sexual intercourse or to submit to the performance of the indecent act, as the case may be, by impersonating that other person's spouse, or lover; or
- (d) has sexual intercourse or performs an indecent act upon the other person while that other person is asleep, and that other person has not consented to the sexual intercourse or the performance of the act before falling asleep; or
- (e) has sexual intercourse or performs an indecent act upon the other person while that other person is hypnotised or intoxicated from the consumption of drugs or alcohol so as to be incapable of giving consent to the sexual intercourse of the performance of the act, and that other person has not consented to the sexual intercourse or the performance of the act before becoming so hypnotised or intoxicated.

(2) The burden of proving that a person referred to in paragraph (d) or (e) of subsection (1) gave consent to sexual intercourse or the performance of an indecent act before falling asleep or becoming hypnotised or intoxicated, as the case may be, shall lie with the person charged.

Article 73 is *prima facie* contrary to Zimbabwe's international human rights obligations as it constitutes discrimination and threatens the right to liberty of men who have sex with men. Article 69 also, on the face of it, threatens the right to due process by placing the burden of proof on the accused, thus not affording him or her right to be presumed innocent until proven guilty, as protected by article 14(2) of the International Covenant on Civil and Political Rights.

The language in articles 66 and 67 may also be contrary to international human rights law as they are so broad and ambiguously phrased as to be considered arbitrary. These articles allow frivolous accusations about sexual relations that may or may not have been consensual and place the full burden of proof on the accused to counter the accusation.

Political Context and Constitutional Reform

Over the years, many high-level political and religious leaders in Zimbabwe have pandered to public prejudices against LGBTI individuals through public statements that justify the abuse and exclusion of anyone suspected of being lesbian, gay, bisexual, transgender, or intersex.

During the year 2011 and a few months into 2012, public attacks on LGBT rights intensified. This appears to be related to the constitutional reform process, and to discussions on whether or not the new constitution would prohibit discrimination on the basis of sexual orientation.

The constitutional reform process itself was a key component of the Global Political Agreement (GPA), the agreement that joined Zimbabwe's main two political parties—the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and the Movement for Democratic Change (MDC) in an inclusive government in 2008. Throughout the constitutional process, high-level politicians, including ministers, army generals, police chiefs and members of parliament from both major political parties have opposed the inclusion of LGBTI protections in the new constitution.

In November 2011, President Mugabe said in a public speech that homosexuals are “worse than pigs and dogs” and that they will be “severely punished” if they practice homosexuality in Zimbabwe. President Mugabe also called UK Prime Minister David Cameron “satanic” for suggesting that the United Kingdom would cut development aid to countries that discriminate against LGBTI individuals. In February 2012, on the occasion of his 88th birthday, President Mugabe referred to same-sex marriage as “insanity” and noted: “We reject [same-sex marriage] outright and say to hell with you.”

Also in February 2012, the co-chairs of the Constitution Select Committee—representing both parties—expressed their emphatic opposition to the inclusion of anti-discrimination clauses for gays and lesbians in the new constitution, even going so far as to say that the new constitution would include provisions to further criminalise same-sex conduct.

There are very few encouraging notes. In October 2011, Prime-Minister Morgan Tsvangirai reversed earlier comments opposing homosexuality and declared his support for gay rights. While this is a positive development, it also demonstrates the use of gay issues in the political process.

As part of its party platform, ZANU PF is calling for the “outlawing of homosexuality, lesbianism, sodomy.” The MDC on the other hand has not included a clear position on the issue of homosexuality in its party platform.

Religious leaders, too, are using public prejudice against homosexuality to further their own agendas. In an internal disagreement between Harare bishops, the main issue became whether or not a church officials had “taken a stance” on homosexuality, and whether this stance was extreme enough (that is, advocating the murder of LGBTI individuals).

Homophobia in Zimbabwe's Media



The media in Zimbabwe contributes to and exacerbates public prejudices against LGBTI individuals by, for the most part, portraying homosexuality as linked to violence and crime.

The right to freedom of expression is protected under international law as essential to the healthy functioning of a democratic society, as set out in article 19 of the International Covenant on Civil and Political Rights (ICCPR) which Zimbabwe ratified in 1991.

However, international law also stipulates that the government has an obligation to temper this right where it is directed at fomenting violence, hatred, and discrimination, and to protect all individuals under its jurisdiction against abuse, without any form of discrimination, including on the basis of sexual orientation and gender identity.

The Zimbabwean government has completely abdicated from this responsibility and appears to celebrate, fuel, and contribute to the homophobic views portrayed in the media, thus contributing to a vicious cycle in which public prejudice against LGBTI individuals is allowed to turn violent.

The media has, in particular, furthered three main myths about homosexuality that have contributed to violence, harassment, and discrimination against LGBTI individuals.

First, the media has portrayed LGBTI individuals as inherently scandalous, immoral, or criminal, linking homosexuality with corruption and child abuse. Sometimes, homosexuality is described as an unnatural deviant practice, which serves to justify abuse because it dehumanises LGBTI individuals to the general public.

This has been particularly damaging in the context of the constitutional reform process, as it has led to the justification of excluding LGBTI concerns and representatives from the political space. It also likely fuels violent harassment as it generates fear in the general population.

Second, many articles are characterising homosexuality as a Western construct—a “behaviour” that is inherently against Zimbabwean culture and national pride, and that has been promoted by the West as part of a neo-colonisation process. This argument is particularly effective in justifying the exclusion of LGBTI concerns and representatives from the constitutional reform process, because the process itself is the first constitutional reform to be undertaken since the signing of the global political agreement, and political leaders have an interest in fuelling a perceived need to exclude foreign elements from the process.

It is ironic that many of the very provisions in the Criminal Law that are used to punish and discriminate against LGBTI individuals are, in fact, Western constructs—inherited from the British colonial powers—whereas sexual orientation and gender identity are known in all modern science to be part of an individual's most intimate sense of self.

Third, the media has seized upon the fact that both major political parties to some extent are using homophobia for political mileage. However, instead of defending the equal rights of all Zimbabweans, regardless their sexual orientation and gender identity, the media often portrays LGBTI individuals themselves as politically divisive and, through their very identity, seeking to destabilise the political process.

In some cases, all of these myths are bundled together in “news” stories that appear to have little basis in reality. In August 2011, ZBC news reported the arrest of a 55-year-old white man being arrested with 4 Zimbabwean male “accomplices” in Borrowdale on charges of “sexual immorality.” The men were arrested after a shop owner saw some of them spending money in an “unusual manner.” The men were held at Domboshava Police Station in Central Harare, and no further reports on the case were obtained.

Without doubt one of the main issues facing LGBTI people in Zimbabwe is opposition from religious institutions. Paradoxically, however, the very source of discrimination for many LGBTI individuals is also their main source of comfort and inspiration. Although it can be a lifelong struggle, many LGBTI people of all faiths do manage to reconcile even the most homophobic religious traditions with their sexual orientation.

Media, all too often, plays a role in promoting the hard line, religious fundamentalist viewpoint through offering “Opinion” features to homophobic religious leaders and by promoting unquestioned beliefs as truth in articles about homosexuality. Prominent Church Leaders are on record for denouncing homosexuality such as in the Anglican Church. This has a negative effect on LGBTI individuals seeking to connect spiritually with their faith.

Pic by Miles Tanhira



The ambiguous and over-broad Criminal Law provisions concerning sexual acts between adults that may or may not be consensual serve to justify routine arrest, threat of arrest, detention, and prosecution of both men and women because of their actual or perceived homosexuality. Some are verbally, physically or sexually assaulted by the police in the course of their arrest or detention, and many suffer extortion at the hands of public officials.

Moreover, in the context of generalised stigma and abuse directed at LGBTI individuals, the law facilitates extortion and harassment of individuals because of their real or perceived sexual orientation or gender identity. In this context, many individuals choose to give in to extortion and hand over most or all of their possessions rather than face abuse in a judicial system that does not protect them or face often violent wrath of their family and neighbours.

Finally, human rights defenders working peacefully to protect the rights of LGBTI individuals are routinely harassed.

Police Abuse, Arbitrary Detention, and Extortion

Pic by Miles Tanhira



In 2011, GALZ documented over 30 cases of arrest and detention of individuals because of their real or perceived sexual orientation or gender identity in cities across the country. The criminalisation of consensual adult sex amounts to discrimination, and the detention of individuals because of such criminal law provisions is a violation of the right to liberty and security of person as protected by article 9 of the International Covenant on Civil and Political Rights.

Often, the police arrest or detain individuals without charge or on charges related to ambiguous or inapplicable criminal law provisions. In Bulawayo, three police details illegally entered and searched the home of Joseph, a known member of GALZ, ostensibly looking for “pornographic materials.” Joseph and his friend were arrested, handcuffed, and detained overnight without being informed of any charges brought against them. Joseph and his friend were released without charge.

In Harare, police officers stormed the apartment of Tawanda a member of GALZ and searched the premises without a search warrant. The police

detained Tawanda and 4 male friends who were present at the time on charges of Disorderly Conduct, and verbally ridiculed and abused the men using homophobic slurs, saying, for example, “Ngochani” (sissy) and “You want to be a woman.” Tawanda and his friends were each fined US\$10, and the police agent taking the payment demanded another US\$30 to accept their payment and let them go. When Tawanda and his friends left Harare Central Police Station, some officers threatened to return every day and every night to Tawanda's apartment to “check up on them.”

In several cases, police officers threatened individuals with arrest or detention for alleged violations of article 73 of the Criminal Law (sodomy) with little or no proof, or simply arrested people for being gay or lesbian, despite that fact that it is not a crime under Zimbabwean law to be homosexual. In Southerton, for example, Chipso and Grace were detained by the police on allegations of “being lesbian.” Two family members had dragged Chipso and Grace to the police station and demanded that they be arrested for their sexual orientation. The women were detained by the police for three hours, during which time they were repeatedly verbally abused using homophobic and sexist slurs. Several police officers also took photos of the women and threatened to send the photos to the national paper for publication. Such threats are not idle in a country where many are beaten up and killed for being gay or lesbian.

Many are verbally, physically, and or sexually assaulted while in detention because of their real or perceived sexual orientation. Themba, for example, was picked up by the police while grocery shopping with a friend, on charges of “being gay.” Themba and his friend were taken to Waterfalls Police station where they were forced to undress and then beaten, in order to get them to confess to being gay. Themba was also sexually assaulted with a police baton, and police officers told him they would shove him into a metal coffin, whether he was dead or alive, and let him die there.

In another case, Golden told GALZ that his legs were restrained with heavy leg irons while in detention, and that he was forced to undergo a medical examination to determine whether he had had anal sex. He was also forced to take unknown medication, allegedly to “cure infections contracted during anal intercourse.” The UN Committee on Economic

Social and Cultural Rights has clarified that the right to the highest attainable standard of health includes the right to be free from non-consensual medical treatment.

Police officers use their authority and power to carry out extortion schemes against LGBTI individuals. Tafara reported to GALZ that four individuals blackmailed him at his home in Harare Central, two of whom claiming they were police officers, and the other two to be from the President's office. The four extortionists told Tafara he was being charged with having had anal sex with another man and with making derogatory remarks about the president. They demanded US\$500 to leave Tafara's resident.

In another case, Kudzai was picked up by two police officers in Harare Central, allegedly on charges of having had sex with another man. On the way to the police station, the police officers demanded US\$100 from Kudzai, and released him without charge when he gave them the money.

Police abuse is contrary to a number of human rights, including the rights to liberty and security of person; freedom of torture or other cruel, inhuman, or degrading treatment; physical integrity; non-discrimination; and life. It is also destructive to society as a whole because it sends the message that some people are arbitrarily excluded from protected under the law. Moreover, police abuse contributes to further normalize violence against LGBTI individuals, thus prolonging the cycle of abuse.

Abuse, Violence, and Extortion in the Community



Individuals who are suspected of being lesbian, gay, bisexual, transgender, or intersex are subject to violence and extortion by family members, neighbours, and other members of their communities.

In some cases, the community violence and harassment directed at gays or lesbians leads to homelessness and destitution. Alex told GALZ he was forced to leave home by his stepmother, who threatened him with reporting his sexuality to the police even after she had compelled him to deny that he was gay in front of several members of his community. After a short stint living with his sister, Alex was forced to leave again because the sister's neighbours reported to her that he was gay. As a result Alex became homeless and ended up having to leave the country. Alex is currently in refuge in Mozambique.

Many LGBTI individuals live in fear of violence and abuse, either because they have witnessed abuse of others, or because they see violent homophobic slurs in the media or indeed media accounts of homophobic violence. One lesbian couple told GALZ they live in fear of being attacked after one of them was recognised by a community member at a screening of “Hungochani” (a documentary film about homosexuality in Zimbabwe). After that time, the couple started noticing individuals near their home that they thought seemed suspicious and sought protection and relocation in order to stay safe.

The violent homophobic language used by politicians from both major political parties exacerbates the general stigma against gays and lesbians in the community. Tafadzwa and Charlene, a lesbian couple has reported that they often are abused and attacked by political party youth groups whenever there are rallies or meetings at the shops close to their home. On one occasion, members of ZANU PF youth forced Charlene to kneel and chant party slogans. Later in 2011, Tafadzwa was attacked by a man from her community, who reportedly physically attacks anyone he believes to be gay. The man hit Tafadzwa with a beer bottle in her head and then proceeded to beat her up while an accomplice held her down. Tafadzwa reported the attack to the police, but to her knowledge no investigations were ever initiated. GALZ has also tried to get information from the police on this case, but no one has responded to these inquiries.

Extortion of individuals known or thought to be gay or lesbian is commonplace. In some cases, extortionists establish a short sexual relationship with the victim in order to have proof of their sexual identity, then begin their blackmailing scheme. Charles told GALZ that an individual who later started demanding money and other payment for not revealing Charles' sexual orientation publicly had aggressively propositioned him. The extortionist started showing up daily at Charles' workplace, every time demanding more cash, clothing, or other payment. After one month of threats, Charles finally saw no other solution than to move away from his hometown, becoming an internally displaced person because of the abuse.

Often extortionists use the fact that police officers arrest individuals arbitrarily for being gay or lesbian by threatening with filing police reports. The existence of overbroad Criminal Law sexual assault provisions also facilitates extortion. In one case, the extortionist filed a police report before he started demanding money, thus making it clear to the victim that real damage could be done. Tadiwa, the victim of this extortion scheme, was detained for three days on charges of having sexually propositioned a person. The extortionist demanded US\$825 from Tadiwa in order to drop the charges.

State authorities have an obligation to address violence and extortion, both to investigate and punish those who attack others, but also to prevent abuse in the first place. In Zimbabwe, the police routinely turns a blind eye to the abuse and extortion of LGBTI individuals, thus contributing to the overwhelming sense of impunity.

Harassment of Human Rights Defenders Working In Defence of LGBTI Rights



GALZ documented several cases of harassment directed at those who organise on behalf of and in defence of others in the LGBTI community, including police disruption of private and peaceful meetings, and the arbitrary arrest or threat of arrest of human rights defenders who work in defence of LGBTI individuals.

In early 2011, GALZ received a telephone tip-off about planned protests to be held outside GALZ offices and properties. On previous occasions, such protests have become violent and riotous, and on several occasions GALZ staff members have received threats of physical attacks and have repeatedly been verbally abused through the office telephone lines.

On 8 December 2011, a group of police officers repeatedly tried to gain access to GALZ offices in Bulawayo as well as to the offices of the Sexual Rights Centre without a search warrant or any explicit reasoning. The police also disrupted a workshop organised by GALZ in Bulawayo on 17 December 2011 and only left the premises after interventions from Zimbabwean Lawyers for Human Rights.

Several GALZ members report being harassed by police and targeted for human rights violations such as invasion of privacy as a direct result of their link to GALZ.

Chipo and Grace, the two women who were detained in Southerton on charges of “being lesbian,” had their cell phones seized during their time at the police station, and police officers called individuals on their contact lists to ascertain the level of the women's involvement with GALZ and to find out who else were members of the organisation.

Themba, who suffered sexual, verbal, and physical abuse while in police custody in Waterfalls, was forced to report the name of a local staff member of GALZ and police officers further forced him to accompany them to the home of this staff member. The staff member was subsequently detained on charges of “promoting homosexuality,” though no such provision exists in law. The police demanded US\$300 to release him.

In October 2011, three lawyers from Zimbabwe Lawyers for Human Rights were ambushed by members of ZANU PF youth as they left a courtroom after having represented two individuals charged with sodomy. The youth members called the three lawyers “unpatriotic” for providing legal counsel to gay men after President Mugabe had denounced homosexuality as unnatural and wrong. The youth members also threatened the lawyers with physical violence and blocked the access to their car.

Conclusion

Lesbian, gay, bisexual, transgendered and intersex individuals in Zimbabwe are routinely subject to violence and harassment by public officials and in their communities. The combination of discriminatory and ambiguous legal provisions in the Criminal Law, the absence of explicit constitutional protections of the right to non-discrimination on the grounds of sexual orientation and gender identity, and high-level politicians' pandering to public prejudices against homosexuals creates an environment where LGBTI individuals cannot feel safe. Police officials contribute to the situation by actively exerting abuse and by turning a blind eye to violence against LGBTI individuals in the community.

Detailed Recommendations

To the President and the Prime Minister of Zimbabwe

In order to discharge Zimbabwe's international human rights obligations to protect the human rights of everyone under Zimbabwe's jurisdiction, the President and the Prime Minister should without delay:

- Immediately cease making statements that in any way vilify, dehumanise, abuse, or slander LGBTI individuals.
- Publicly denounce violence directed at LGBTI individuals.
- Announce the investigation of all allegations of police abuse and extortion of LGBTI individuals, as well as the suspension of public service of those found guilty of abuse or extortion.
- Publicly announce support for the inclusion of explicit protections of the right to non-discrimination on grounds of sexual orientation and gender identity in the new constitution.
- Publicly support the work of all human rights defenders, including those working in defence of the right to non-discrimination on the basis of sexual orientation and gender identity.

To Zimbabwe's Ministry of Justice and Legal Affairs

The Ministry of Justice and Legal Affairs must without delay:

- Investigate all allegations of public official abuse against LGBTI individuals, with a view to suspending police officers and other public officials found guilty of abuse or extortion.
- Apply appropriate sentences for gross human rights violations such as torture or cruel, inhuman, or degrading treatment or punishment, including the physical and sexual abuse of LGBTI individuals in police custody.

To Zimbabwe's Parliament

Zimbabwe's current legal framework is *prima facie* inconsistent with the country's international human rights obligations. Furthermore, several Criminal Law provisions are used to justify abuse against LGBTI individuals by being overbroad and ambiguous, in contravention of provisions that require laws to be predictable, proportionate to their aim, and for the government to monitor the effect of its laws and policies. Zimbabwe's government should immediately move to:

- Repeal article 73 of the Criminal Law
- Amend articles 66, 67, and 69 of the Criminal Law to ensure the right of everyone to be presumed innocent until proven guilty, and to remove any gender bias in the applicability of the law, and to remove any criminalisation of consensual adult sex.

To the Co-Chairs of the Constitution Select Committee

In order to ensure the protection of the rights to non-discrimination and participation as regards to the constitutional drafting process, the Co-Chairs of the Constitution Select Committee should immediately:

- Publicly reverse their statements regarding the exclusion of non-discrimination protections on grounds of sexual orientation and gender identity from the new constitution.
- Include provisions in the draft constitution that discharge Zimbabwe's international obligations to guarantee the right to non-discrimination on all grounds, including explicit protections of the right to non-discrimination on the basis of sexual orientation and gender identity.



 HEINRICH BÖLL STIFTUNG

DFID Department for
International
Development



INTERNATIONAL GAY & LESBIAN HUMAN RIGHTS COMMISSION
HUMAN RIGHTS FOR EVERYONE, EVERYWHERE

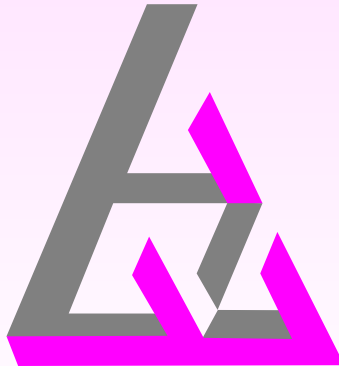
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ABOUT GALZ

GALZ(also known as the (“Gays and lesbians of Zimbabwe”) [GALZ] is a *universitas*, voluntary membership based organization established in 1990 to serve the needs of the Lesbians, Gays, Bisexual, Transgender and Intersex [LGBTI] community in Zimbabwe.

The **Vision** of GALZ is '*a just society that promotes and protects human rights of LGBTI people as equal citizens in Zimbabwe*'.

GALZ's **Mission** as a membership-based association is to promote, represent and protect the rights and interests of lesbians, gays, bisexuals, transgender and intersex people through: Advocacy, Lobbying, Empowerment. Education, Research and; Provision of safe spaces ...In order to influence positive attitudes of the broader society

GALZ can be contacted through:

The Health Department, P. Bag A6131,Avondale Harare – email: health@galz.co.zw

The Gender Department, P. Bag A6131,Avondale Harare – email: gender@galz.co.zw

General Enquiries, P. Bag A6131,Avondale Harare – email: info@galz.co.zw

Website: www.galz.co.zw