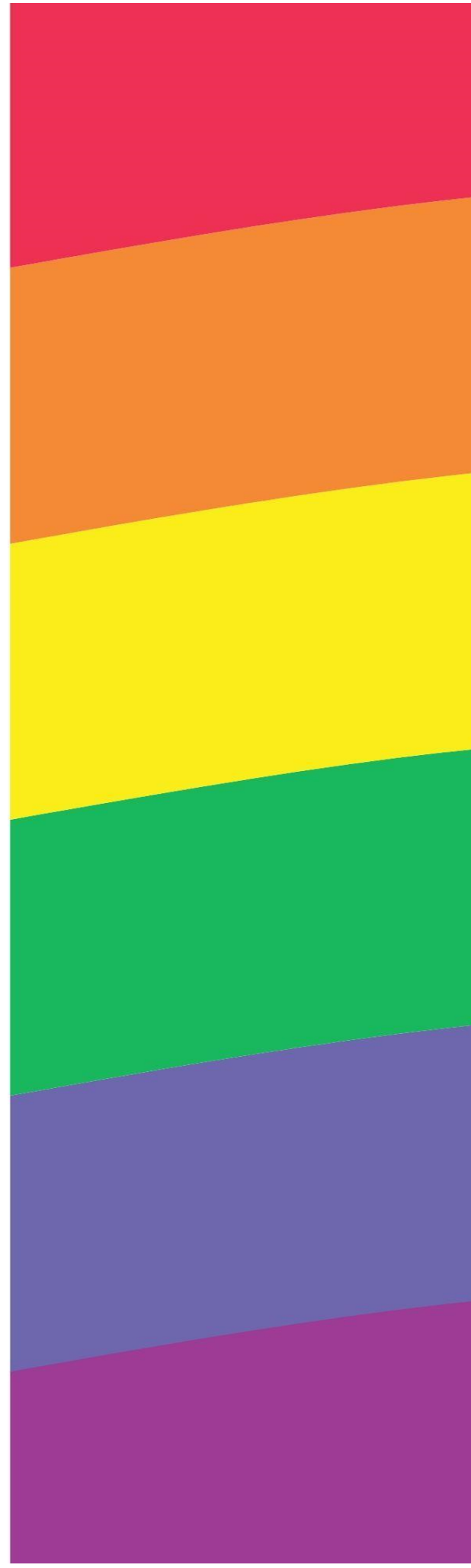


# UPR Reporting - Zimbabwe

ZIMBABWE'S THIRD UNIVERSAL PERIODIC REVIEW  
40TH SESSION (OCTOBER-NOVEMBER 2021)



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## Table of Contents

|  |           |
|--|-----------|
| <b>1. Introductory Background .....</b>  | <b>3</b>  |
| Legal Framework in Zimbabwe .....  | 3         |
| Discrimination Against LGBTI Persons.....  | 3         |
| Recognition of Same-Sex Marriage .....   | 5         |
| Protection by the State .....  | 5         |
| <b>2. Implementation of Previous Recommendations from UPR and UN Treaty Bodies .....</b> | <b>6</b>  |
| <b>3. Additional Information.....</b>  | <b>13</b> |
| Access to Gender Reassignment Surgery and Hormone Therapy.....                           | 13        |
| Hate Speech Against the LGBTI Community .....  | 13        |
| Treatment of LGBTI NGOs and Human Rights Activists .....                                 | 14        |

## **1. Introductory Background**

During Zimbabwe's second UPR cycle in 2016, several stakeholder reports noted that LGBTI persons still faced stigma and discrimination and violation of their human rights. The state received 10 LGBTI related recommendations. All the recommendations were noted.

## **Legal Framework in Zimbabwe**

Section 56 of the Constitution protects all persons against different forms of discrimination.<sup>1</sup> The term 'all person' implies that every Zimbabwean citizen is included. However, we continue to witness accounts of stigma and discrimination against LGBTI persons as there is discordance between policy and practice as most of the provisions in the legal framework are neither fully enforced nor implemented. The Constitution protects women's rights and prohibits discrimination on basis of gender and guarantees equality for all citizens and freedom from unfair discrimination, it fails to specifically prohibit discrimination based on sexual orientation and gender identity. Homophobia and transphobia permeate Zimbabwean society unchecked and manifests itself in different forms, ranging from verbal and physical assault on, to discrimination of, lesbian, gay, bisexual, transgender and intersex people on the basis of their sexual orientation or gender identity. Refusal by duty bearers and policy makers to address this issue has resulted in the public intolerance of lesbian, gay, bisexual, transgender and intersex persons becoming deeply ingrained in the community and reinforces the general stigmatization of sexual minorities in society.

There is also criminalization of consensual intercourse between two adult men and even physical contact other than intercourse "that would be regarded by a reasonable person to be an indecent act" through Section 73 of the Criminal Codification and Reform Act Chapter 9:23.<sup>2</sup>

There has been notable inclusion of LGBTI persons in the Extended Zimbabwe National HIV and AIDS Strategic Plan and the Key Populations Implementation Plan within the framework of HIV programming. The plan clearly acknowledges that closing of new HIV infections may be difficult to meet without reducing infection among high-incidence populations, for example, Men who have sex with Men (MSM) and the broader Key Population through prevention methods appropriate for these populations, like PrEP.<sup>3</sup>

## **Discrimination Against LGBTI Persons**

The lack of recognition of lesbian and bisexual women results in lack of access to gender affirming and LGBTI friendly health care services. Trans and intersex persons face difficulties in acquiring legal documents such as IDs, driver's licences and passports, especially for people whose gender identity does not match their documents; loss of employment opportunities and banking challenges. There is no legal option to change gender pronouns on state identity cards, creating identification and travel difficulties for transgender persons. The mismatch between gender presentation and identification pronouns can lead state officials, police, and potential employers to believe the individual is committing identity theft, sometimes leading to criminal

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<sup>1</sup> <http://www.zhrc.org.zw/your-rights/>

<sup>2</sup> <https://zimlil.org.zw/legislation/num-act/2004/23/Criminal%20Law%20%28Codification%20and%20Reform%29%20Act%20%5BChapter%209-23%5D.pdf>

<sup>3</sup> <http://nac.org.zw/wp-content/uploads/2019/01/Extended-Zimbabwe-National-AIDS-Strategic-Plan-3.pdf> s 4.10

arrest.<sup>4</sup> Gender markers are binary and do not accommodate intersex identities of people who do not identify with state prescribed binary gender markers (M or F).<sup>5</sup> Transgender and Intersex persons have trouble accessing any government initiatives and programs that require producing legal documentation e.g., voting during the electoral process and the currently ongoing COVID-19 Vaccination program.<sup>6</sup> Lack of ability to change gender markers also leaves transgender individuals vulnerable to accusations of same sex relationships, which are currently illegal.

Numerous LGBTI persons have lost their jobs<sup>7</sup> or been forced to resign due to an extremely hostile environment as a result of their sexual orientation or gender identity.<sup>8</sup> Public sector employment prioritizes marriages and preferentially rewards employees who are married. Openly gay employees are faced with unabated homophobia and death threats to a point where they are forced to resign.<sup>9</sup> According to GALZ an association of LGBTI persons in Zimbabwe, LGBTI persons often left school at an early age due to discrimination. Higher-education institutions threaten to expel students based on their sexual orientation.<sup>10</sup> Social spaces such as bars and clubs often use the right of admission as a reason to discriminate against LGBTI persons.

LGBTI persons face stigma and consequences from their family and community. According to a 2018 GALZ survey (an association for LGBTI people in Zimbabwe), 64% of gay men and 27% of lesbian women in Zimbabwe had been disowned by their families. As a result, LGBTI persons who are not out may face the risk of being blackmailed or outed and facing consequences.<sup>11</sup> Blackmail and being “outed” are two of the most common forms of repression of LGBTI persons. It is common for blackmailers to threaten to reveal one’s sexual identity to police, the church, employers, or family if the victim refuses to render payment.

There is a lack of protection of LGBTI individuals from the police when reporting cases of violation and hate crimes. The Victim friendly unit (VFU) is not friendly to LGBTI individuals. Instead of getting help they get re-victimized or doubly persecuted. The authorities commonly harass LGBTI persons on the grounds of indecency and public order offences. According to the 2018 GALZ survey, 50% of gay men in Zimbabwe have been physically assaulted.

LGBTI-identifying persons have also been discriminated against when it comes to child adoption. According to section 59(1)(v) of the Children’s Act 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 eliminates LGBTI people from the process of adoption on the basis that same-sex marriages are prohibited under the constitution. Furthermore, lesbian and bisexual women with children are often seen as unfit parents by family members and society because of their sexual orientation and may end up losing custody of their children to family members as a result.

Discrimination in religious spaces based on LGBTI status is quite rife with conversion therapy and incidences of corrective rape from religious leaders. The country is rife with forced

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<sup>4</sup> <https://www.state.gov/wp-content/uploads/2021/03/ZIMBABWE-2020-HUMAN-RIGHTS-REPORT.pdf>

<sup>5</sup> <https://www.southernafricalitigationcentre.org/2021/01/25/news-release-out-and-proud-project-lgbti-rights-in-zimbabwe/>

<sup>6</sup> <https://www.dw.com/en/zimbabwe-lgbti-community-wants-safe-place-to-vote/a-44707244>

<sup>7</sup> <https://www.chronicle.co.zw/gay-party-civil-servant-fired/>

<sup>8</sup> <https://www.bbc.com/news/world-africa-45665906>

<sup>9</sup> <https://edition.cnn.com/2018/09/28/africa/gay-zimbabwe-deputy-head-teacher-resigns-intl/index.html>

<sup>10</sup> <https://www.state.gov/wp-content/uploads/2021/03/ZIMBABWE-2020-HUMAN-RIGHTS-REPORT.pdf>

<sup>11</sup> <https://kubatana.net/2018/07/26/actus-reus-analysis-human-rights-violations-lgbti-persons-zimbabwe/>

marriages, child-bearing as a form of corrective therapy,<sup>12</sup> and overwhelming pressure from the nuclear and extended family for LGBTI persons to marry, cohabit with a partner of the opposite sex or enter a heterosexual union.

Intersex “corrective” genital mutilation surgeries on non-consenting minors who have yet to establish gender identities are the norm, as intersex conditions are often seen as a source of embarrassment or taboo. Health care professionals such as the Head of Mpilo Hospital, Professor Solwayo Ngwenya, have implied that individuals with ambiguous genitalia are at greater health risk. He is quoted as having stated that “they need to be fixed into the norm.”<sup>13</sup>

Section 16 of the Sexual Offences Act criminalizes spreading of HIV through acts like sodomy, even when the individual did not know they were HIV positive. This disproportionately impacts members of the LGBTI community. Also, as a result, they often do not have the support and protection needed to prevent or treat HIV infection.

Tabloid and newspaper sources vilify and use derogatory sensational stories to report on LGBTI news which contributes to homophobia and transphobia.<sup>14</sup> Heads of state and political party leaders frequently use discriminatory and dehumanizing language to talk about LGBTI people, normalizing the idea that there is no space for them in Zimbabwean society. Furthermore, LGBTI persons are targeted online with hate speech.

## **Recognition of Same-Sex Marriage**

Same-sex marriages are not recognized by the law. Section 73 of the Criminal Law Act of 2006 says:

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...

According to the ICCPR report, the recently concluded 2020 Stigma Index Research carried out by the Zimbabwe National AIDS Council also highlighted that criminalisation of same-sex sexual relations resulted in public officials and workers (like health care workers at public facilities) denying services to the LGBTI community on the basis that the legislated prohibition on same-sex sexual relations barred them from offering services to LGBTI people.

## **Protection by the State**

The state has enacted numerous measures to prevent and protect certain minorities from discrimination. Section 22 of the Constitution recognises the rights of persons with disabilities to be treated with respect and dignity, and to have accessible communications and

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<sup>12</sup> <https://news.trust.org/item/20170903230812-0ku03/>

<sup>13</sup> <https://rights263.substack.com/p/mpilo-hospital-boss-defends-intersex?fbclid=IwAR3ehY3bqUO2sorO983eFfOQwikGXCWjI4fUMtHliczG2ReEkH4uSFDOS90>

<sup>14</sup> <https://www.hmetro.co.zw/gokwe-man-dresses-poses-as-hooker/>; [https://www-tori-ng.cdn.ampproject.org/v/s/www.tori.ng/amp/38024/oh-no-see-female-soldier-caught-having-affair-with.html?amp\\_js\\_v=a6&amp\\_gsa=1&usqp=mq331AQHKAfQArABIA%3D%3D#aoh=16203861484830&referrer=https%3A%2F%2Fwww.google.com&amp\\_tf=From%20%251%24s&ampshare=https%3A%2F%2Fwww.tori.ng%2Fnews%2F38024%2Foh-no-see-female-soldier-caught-having-affair-with.html](https://www-tori-ng.cdn.ampproject.org/v/s/www.tori.ng/amp/38024/oh-no-see-female-soldier-caught-having-affair-with.html?amp_js_v=a6&amp_gsa=1&usqp=mq331AQHKAfQArABIA%3D%3D#aoh=16203861484830&referrer=https%3A%2F%2Fwww.google.com&amp_tf=From%20%251%24s&ampshare=https%3A%2F%2Fwww.tori.ng%2Fnews%2F38024%2Foh-no-see-female-soldier-caught-having-affair-with.html)

buildings. Due to the acknowledgement that women and girls are often victims of social and economic injustice, the state has also enacted legal frameworks and policies to ensure their protection, including the Domestic Violence Act 5(16), Marriage Act [Chapter 5:11], Termination of Pregnancy Act [Chapter 15:10], Criminal Law (Codification and Reform) Act [Chapter 9:23 and Sections 17, 80 and 245 of the Constitution].<sup>15</sup>

Despite all these efforts for other minorities, the state has not put forth any measures to protect persons who identify as being LGBTI from discrimination. While section 56(3) of the Constitution does mention gender as a protected ground, this protection does not explicitly include protections for transgender or gender nonconforming individuals.

## **2. Implementation of Previous Recommendations from UPR and UN Treaty Bodies**

### **a. The State should prohibit discrimination against persons because of their real or imputed sexual orientation, gender identity or expression, and ensure adequate protection for lesbian, gay, bisexual, transgender and intersex persons.**

LGBTI persons continue to face discrimination in all aspects of life, as described in the previous section. They also do not have the same protection that the general population has when it comes to reporting crimes and having their cases taken seriously.

The majority of cases go unreported due to fears of navigating the local justice system and social prejudice. Though the government has a constitutionally founded Zimbabwe Human Rights Commission, the commission is not doing much when it comes to sexual rights awareness programs, hence some cases are not reported due to limited knowledge among LGBTI persons as to how to manoeuvre the justice system. Due to the Criminal Codification and Reform Act which criminalises consensual adult sex and nonsexual activities between two men, victims are further scared to suffer from the victim shaming which highlights the state of police services. This has also led community members to fail to report instances of Intimate Partner Violence, Sexual and Gender Based Violence and other forms of violence. There are systems in place in the form of police victim friendly units who facilitate post rape services and counselling for rape victims, however these services are often not LGBTI friendly.

In the event that these cases are reported, they are often met with derision and may even require assistance from third parties due to discriminatory attitudes of law enforcement agents. Most reported cases are never followed up on vigorously and end up cold cases. For example, police did not investigate the disappearance in February/March 2020 of Denise, a transwoman.

Victims also face challenges accessing remedies. In the ground-breaking Ricky Nathanson case, Ms. Nathanson was awarded \$400,000 in damages for unlawful arrest, malicious prosecution and emotional distress. However, though the judgment came in 2019, the money has still not been paid out.

There have been some recent court cases relevant to the protection of LGBTI persons, as described below, but these cases are few due to fear of discrimination of by law enforcement

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<sup>15</sup><https://zimlil.org/content/constitutional-and-legal-frameworks-protection-women-against-violence-zimbabwe>

agents. Furthermore, commissions such as Zimbabwe Lawyers for Human Rights (ZLHR) avoid working on cases that involve militia or high-profile individuals.

- Ricky Nathanson case

The Honourable Justice Bere awarded Ricky Nathanson, a transgender woman and activist originally from Bulawayo, \$400,000 in damages for unlawful arrest, malicious prosecution and emotional distress.

The significant High Court decision came after Ms Nathanson sued the police in 2014. In January of that year, she was arrested by six riot police officers on charges of “criminal nuisance” for wearing female clothes and using a female toilet. She was forced to undergo invasive and humiliating medical/physical examination and asked to remove her clothes in front of five male police officers in order to “verify her gender”. She was forced to spend two nights in police holding cells in the most appalling conditions. During the period of her arrest, the case made national headlines and the mainstream media exposed her life to public scrutiny.<sup>16</sup>

- Raymond Sibanda case

Sibanda was dismissed from work on the basis of misconduct in terms of civil service regulations for, among other things, “putting the name of the ministry into disrespect and disrepute” on the grounds that he was engaging in gay practices. This was after a police raid at a hotel on the outskirts of Bulawayo, where he was part of a crowd allegedly attending a Christmas party hosted by the Gays and Lesbians Association of Zimbabwe, commonly known as GALZ. Raymond challenged his fair dismissal in court and the judge ruled in his favor and he was reinstated.<sup>17</sup>

- GALZ an association of LGBTI people in Zimbabwe registration case

In this case, the state accused GALZ of “unlawfully taking part in the management of the organisation by gathering its members and continued to carry out activities while engaging in gays and lesbian activities”. In his ruling, Magistrate Don Ndirowei noted that the High Court order issued to GALZ was still in force since the state had not appealed or applied for a recession of the Order; therefore, it was binding on the State, the Minister of Home Affairs, the Police and the Magistrate’s court.

He noted that paragraph four of the High Court Order held that GALZ was not obliged to be registered in terms of the Private Voluntary Organisation Act (chapter 17:05) as it was not a Private voluntary organisation and specifically exempted by operation of section 2 (h)(v) of the same act.<sup>18</sup>

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<sup>16</sup> <https://www.southernafricalitigationcentre.org/2019/11/18/breaking-news-zimbabwe-high-court-awards-damages-in-ground-breaking-judgment-in-favour-of-ricky-nathanson-a-transgender-woman-and-activist/>

<sup>17</sup> <https://www.voazimbabwe.com/a/zimbabwe-gays-lesbians-association-dismissal-employee/2977251.html>

<sup>18</sup> <https://www.facebook.com/191415244203216/posts/763397503671651/>



**Recommendations :**

- 1) The State should broaden the non- discrimination clause to specify that no one can be discriminated on the basis of SOGIESC. We recommend that the state includes sexual orientation and gender identity in the constitution, section 56(3), as grounds upon which one should not be treated in an unfairly and discriminatory manner to ensure ALL citizens of Zimbabwe are treated without partiality.**
- 2) The state should conduct swift, impartial and effective investigations into the unlawful intimidation, discrimination, violence, extortion, assault, torture, and verbal/emotional abuse against all persons including the LGBTI individuals and enact follow up mechanisms to ensure victims are adequately compensated and rehabilitated.**
- 3) The state should scale up sensitization trainings of public service workers and all law enforcing agents to eliminate social stigma associated with gender diversity and to be inclusive of SOGIESC.**
- 4) The state should ensure all organizations adhere to equality, diversity and inclusion policies that also include LGBTI persons in line with the universal non-discriminatory principle of human rights.**

**b. The State should decriminalize same-sex relations.**

Same-sex marriages are not recognized by the law and consensual sexual and nonsexual “indecent acts” between two men are criminalised. The Criminal Code and the Reform Act of 2006 has not been repealed or reformed.

The State has been seemingly neutral when it comes to decriminalizing consensual same sex relations. In an interview with CNN journalist Richard Quest, the current head of state, Emmerson Mnangagwa, came on record saying, “Those people who want it [same sex marriage] are the people who should canvass for it, but it’s not my duty to campaign for this.” He also said, “In our constitution it is banned – and it is my duty to obey my constitution.”<sup>19</sup>

**Recommendation :**

- 5a) The state should repeal all legislation that criminalizes consensual same sex activities among adults.**
- 5b) The state should condemn arranged or forced marriages targeting lesbians, bisexuals and other gender non-conforming persons.**

**c. The State should adopt urgent measures to make progress on the elimination of all forms of discrimination, stigmatization and violence against people on the basis of their sexual orientation and gender identity.**

The State has not implemented measures to prevent violence against the LGBTI community. The LGBTI community is not explicitly stated as a protected group in the LGBTI non-discriminatory clause in the Constitution. The SOGIESC element is also not adequately identified in the investigation and prosecution of cases.

LGBTI persons have no faith in the legal system as it has historically worked against them, so quite often a majority of the community members do not report cases of discrimination on the

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<sup>19</sup> <https://www.gaytimes.co.uk/life/zimbabwes-new-president-says-not-duty-fight-lgbtq-rights/>



basis of Gender identity and Sexual orientation. Intimidation occurs for those who attempt to report cases.

Due to the hostile environment, it is harder to collect statistics on hate crimes as most members of the community are closeted. However, the PV-KP Reach REAct program released a 2017 Human Rights Violation Annual Report where it states:

Many human rights violation cases recorded by REActors in Zimbabwe take place in urban centres, with unique violations occurring in peri-urban and rural areas. Of the total 31 recorded cases, trans persons (20) and gay men (11) suffered the highest number of human rights violations, followed by sex workers (5) and lesbians (2). Fifteen (15) responses were provided.<sup>20</sup>

According to a 2018 survey conducted by GALZ an association of LGBTI persons in Zimbabwe, 50% of gay men in Zimbabwe have suffered physical violence and 64% of gay men and 27% of lesbian women have been disowned by their families.<sup>21</sup>

**d. The State should eliminate discrimination, stigmatization and violence against persons based on their sexual orientation and gender identity and through public dialogue, promote tolerance and a culture of non-discrimination.**

Though there have been current positive civil society and state partnership steps taken, particularly in HIV programming which has culminated in sensitizations of healthcare professionals towards LGBTI persons, for example, administration of PrEP in public health facilities through the PrEP implementation plan, the state has not made significant progress in creating a more enabling environment that facilitates better access to health care services for LGBTI persons.

The pro-state media is involved in peddling discrimination and stigmatization of LGBTI persons. The state has not engaged in public dialogue to promote a culture of non-discrimination on the basis of SOGIESC.

The state has supported and organised awareness raising campaigns promoting tolerance and respect for diversity for other minority groups, such as people with disability and albinism and women. Examples of state supported awareness raising campaigns are the UNICEF Engaging Children with Disabilities in Policy and Legislative Dialogue in partnership with the Office of the Advisor to the President and Cabinet on Disability Issues, the Ministry of Public Service, Labour and Social Welfare, and the Ministry of Justice, Legal and Parliamentary Affairs and Awareness on Intersection of Disability in the face of COVID-19 Pandemic by the ministry of Public service, labour and social welfare.<sup>22</sup> However, nothing has been done to promote respect and tolerance of LGBTI persons.

Generally, the legal environment in Zimbabwe is restrictive when it comes to gatherings or assembly. There is a lot of bureaucracy surrounding permission to organize awareness or

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<sup>20</sup> <https://positivevibes.org/wpbeta/wp-content/uploads/2017/06/PV-KP-REACH-REAct-Human-Rights-Violations-Annual-Report-November-2017.pdf>

<sup>21</sup> <https://kubatana.net/2018/07/26/actus-reus-analysis-human-rights-violations-lgbti-persons-zimbabwe/>

<sup>22</sup> [www.unicef.org/zimbabwe/stories/engaging-children-disabilities-policy-and-legislative-dialogue;](http://www.unicef.org/zimbabwe/stories/engaging-children-disabilities-policy-and-legislative-dialogue;)  
<https://www.mpslsw.gov.zw/awareness-on-intersection-of-disability-in-the-face-of-covid-19-pandemic/>

support based campaigns. The police still have the power to prohibit meetings and to criminalize and abuse people who fail to notify the police when they engage in demonstrations or gatherings.

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, which has largely affected the already discriminated against LGBTI-serving organisations in terms of visibility. In that regard, the government of Zimbabwe recently enacted the Maintenance of Peace and Order Act (MOPA) which regulates people's rights to protest.<sup>23</sup> Section 2 of MOPA contains many provisions that rehash those 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.

**Recommendation:**

**6) The state should repeal MOPA and POSA act to protect freedom of expression, association, petition, peaceful demonstration and assembly.**

**e. The State should make progress, both at the legislative level and in practice, in ensuring the rights and fundamental freedoms of lesbian, gay, bisexual, transgender and intersex persons.**

The supreme law of the land regards all citizens of Zimbabwe as deserving of fundamental human rights and freedoms. It emphasizes the importance of non-discrimination and equality before the law. However, the constitutional commitment to non-discrimination is not echoed and carried through to other sections of the justice system. This has resulted in unmitigated discrimination against LGBTI persons and the denial or violation of their rights and fundamental freedoms. The legislation has not evolved to emphasize and facilitate an environment which is conducive for upholding and enforcing the commitment to non-discrimination.

There is no recognizable and specific state practice that ensures that LGBTI people enjoy fundamental rights in Zimbabwe.

**Recommendation :**

**7) In line with SDG 16 (justice for all) and National Development strategy (NDS) the state in the best interest of ALL persons should implement policies and laws that prohibit violence on**

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<sup>23</sup> <https://www.hrforumzim.org/publications/an-analysis-of-the-maintenance-of-peace-and-order-bill-2019/>

the basis of SOGIESC in order to ensure that all persons are protected by the long arm of the law.

**f. The State should allow the change of gender markers on government issued documentation.**

The law is silent on the changing of identity markers on government documents. While it is not explicitly prohibited, there is no law that allows it either.

The barriers to changing gender markers are both cultural and social. Trans and Intersex issues are seen as taboo in society and often not publicly addressed. As a result, there is general silence even within the constitution, resulting in challenges when trans and intersex individuals attempt to change their gender marker and names.

The challenges in correcting gender-markers emanate from conservative cultural and social values within broader society surrounding identity, gender and sexuality. Within society, one's sense and expression of identity should conform to societal expectations, with individuals required to uphold their inherited and ancestral identity/name. This also informs reluctance by the law to recognize the legitimate need by LGBTI persons to effect affirming changes to their gender markers. Furthermore, the Registry department, which still uses an analogue and paper-based filing system, usually has delays in issuing government documentation such as birth certificates and national identification cards. This limits the access to government documentation even for members of the LGBTI community who may be registering for this documentation for the first time. The state also plays a role in emphasizing these challenges in terms of trying to maintain the cultural and moral fibre of society.

With the currently ongoing COVID 19 vaccinations and looking at the upcoming 2021 elections, trans and intersex individuals have faced and continue to face barriers caused by the state issued binary gender markers.

**Recommendation:**

**8) The state should grant access to legal gender recognition for trans and intersex persons so that they can fully exercise their citizenry rights.**

**g. The State should eliminate discrimination against LGBTI persons concerning immigration and deportation.**

The Zimbabwean law does not explicitly and expressly discriminate on the basis of sexual orientation and gender identity in the immigration process. Discrimination within the immigration process stems from prevalent social and cultural values on identity, gender and sexuality which results in non-cisgender LGBTI immigrants being subjected to undue examination and interrogation by migration officials with a possibility of detention or denial of entry. Across broader Zimbabwean society, gender-diversity and homosexuality are regarded as foreign and largely Western phenomena, resulting in immigrants who are openly or perceived as LGBTI-identifying being labelled as promoting a "homosexual agenda."

While the SADC Protocol on the facilitation of Movement of Persons aims to encourage free movement of persons amongst member states<sup>24</sup>, LGBTI people continue to face barriers when entering and leaving Zimbabwean ports of entry. There have been instances where one is turned away from a port of entry because of their gender identity and expression. E.g., a Zambian trans woman working with HIVOs, an international cooperation organization, was denied entry in 2019 at the Robert Gabriel Mugabe International Airport.

Furthermore, Zimbabwean trans persons often face humiliation, invasive bodily examination, interrogation and forced detention at airports because of the discrepancy between their identity documents and gender identity.

In instances of airport detention, the victim is often eventually released because their detention has no lawful basis albeit the victim will already have faced humiliation. There are no reporting procedures set in place and no access to retribution for victims.

**Recommendation:**

**9) The state should scale up sensitization of customs and immigration personnel on SOGIESC to ensure free legal movement of LGBTI persons in line with the SADC protocol on the facilitation of movement of person.**

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<sup>24</sup> <https://www.sadc.int/documents-publications/show/800#:~:text=The%20SADC%20Protocol%20on%20Facilitation,people%20of%20the%20region%20generally>

### 3. Additional Information

## **Access to Gender Reassignment Surgery and Hormone Therapy**

Public medical services do not offer hormone therapy or gender-confirmation surgeries to the transgender and intersex community. Transmen, out of desperation, are often forced to self-medicate through the street market, which is an expensive route and can cause serious life-threatening complications such as blood clots, strokes, and pulmonary emboli. Trans women seeking oestrogen therapy are required to purchase and self-administer the medicines privately or travel to neighbouring countries where treatment is available.

#### **Recommendation :**

**9) In line with SDG3 ('Ensure healthy lives and promote wellbeing for all at all ages) and the goal to achieve universal health coverage (UHC) and access to quality health care with no one left behind we recommend that the state ensures public medical services offer the life – saving and gender affirming services including hormonal therapy and surgeries that the transgender and intersex community needs.**

## **Hate Speech Against the LGBTI Community**

A recent newspaper article was released that touched on the genital mutilation surgeries that intersex persons are subjected to. This article was a follow through to a larger media campaign called “operation restore to normalcy” by Mpilo Hospital. The rhetoric around intersex persons was very dehumanizing and also revoked the bodily agency that intersex persons are entitled to.<sup>25</sup>

The media has portrayed Trans people as being fraudulent about their identities and essentially using their assigned birth genders as a weapon to delegitimize their true identities. For example, a trans man whose wife found out that he was assigned female at birth was the subject of an online article in which he was misidentified throughout the entire article.<sup>26</sup> The media also portrays LGBTI people, particularly gay and bisexual men, as being morally defunct, philanderers, homewreckers and rapists who use alcohol as an enticement medium.

The Leader of one of the opposition parties Nelson Chamisa has outwardly expressed his lack of support for members of the LGBTI community.<sup>27</sup> When MP Temba Mliswa was faced with allegations of homosexuality, he stated, as captured by iHarare.com, that he hated homosexuality, despite the fact that prior to this statement in December 2019 he had acknowledged on Twitter the need for dialogue in relation to humanizing the LGBTI community.<sup>28</sup>

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<sup>25</sup> <https://rights263.substack.com/p/mpilo-hospital-boss-defends-intersex?fbclid=IwAR3ehY3bqUO2sorO983eFfOQwikGXCWjI4fUMtHliczG2ReEkH4uSFDOS90>

<sup>26</sup> <https://www.herald.co.zw/bizarre-marriage-hubby-of-3-years-turns-out-to-be-a-woman/>

<sup>27</sup> <https://www.facebook.com/zimlocal/videos/497059007754581/>

<sup>28</sup> <https://iharare.com/im-actually-homophobic-temba-mliswa-says-as-he-tries-to-prove-hes-not-homosexual-gets-arrested-for-accusing-cio-boss/>

Although there is still more to be done it is important to note that mainstream digital and print media has recorded a decrease in articles and publications that negatively profile and stereotype LGBTI persons. Reportage on sexual reproductive health needs and gaps in service delivery for LGBTI persons has increased which has generated positive visibility and cast a spotlight on LGBTI issues in Zimbabwe.<sup>29</sup> Public dialogue and conversations on LGBTI rights and inclusion have intensified across social media platforms such as Twitter, Facebook and Instagram. While these platforms have facilitated broader dialogue and conversations on LGBTI issues, there is marked homophobia and widespread ignorance on LGBTI issues across the Zimbabwean populace.

Zimbabwe's transition into the second dispensation has recorded a gradual shift towards a more tolerant and LGBTI-inclusive political discourse. Since President Mnangagwa's ascendancy, there is no record of political rhetoric and hate-speech against LGBTI persons from the ruling party ZANU PF, implying some level of political tolerance. Zimbabwe is fast approaching the pre-election period which previously has been characterized by homophobic utterances from political leaders, as well as targeting of LGBTI persons, activists and civil society organizations by law enforcement agents. To augment this political tolerance, the President of Zimbabwe is on record challenging LGBTI activists to canvass for the rights of LGBTI persons and communities during his inaugural visit to the World Economic Forum in January 2018. While there is an overall debilitating status of human rights in Zimbabwe punctuated by military crackdowns on political demonstrations and intensified quelling of political dissent, there has not been deliberate targeting of LGBTI persons and activists, signalling a gradual progressive political shift.

**Recommendation :**

**10) The state should adopt and adapt the necessary measures to eradicate the tendency and/or diffusion, through the media and by politicians, of stereotypes and hate speech that may promote discrimination and violence against persons, based on their real or imputed sexual orientation and gender identity.**

## **Treatment of LGBTI NGOs and Human Rights Activists**

The overall human rights situation in Zimbabwe is dire with targeting of human rights activists and defenders by the militia, central intelligence and law enforcement agents. There are reports of brutality, torture and intimidation of human rights defenders and activists, as well as several high-profile prosecutions of opposition leaders and organizers of political demonstrations. This has repressed political agency and curtailed the active role of civil society in challenging totalitarianism and military sanctioned violations of human rights.

LGBTI human rights defenders and NGOs have to distinctly and exclusively focus on non-political work to avoid the threat of deregistration. While this has allowed LGBTI NGOs to operate, it has limited their purview as most of them avoid work that may intersect with politics. There is a looming political threat which hovers over civil society in Zimbabwe, limiting the

<sup>29</sup> <http://fokusmag.co.zw/index.php/2021/05/26/systematic-attack-on-lgbti-community-is-un-african-treat/>;  
<https://cite.org.zw/lgbtiq-community-struggles-to-survive-as-covid-19-strains-mental-health/>;  
<https://cite.org.zw/intersex-and-transgender-persons-struggle-to-access-gender-affirming-healthcare-services-in-zimbabwe/>

free operation of NGOs while human rights defenders can easily be accused of inciting violence, peddling regime change, or undermining and subverting the government.

Recently, there have not been cases of threats, attacks and reprisals against LGBTI HRDs or NGOs in Zimbabwe. The President has however threatened to deregister any local NGOs and bar any international NGOs from operating in Zimbabwe if there is evidence that they are involved in political work.<sup>30</sup>

Generally, the government of Zimbabwe has used the COVID-19 lockdown to introduce and enforce stringent movement regulations, increase traffic roadblocks which are now manned by both the police and armed military personnel, as well as ban high volume public gatherings and assembly. These novel measures add to existing regulations which require demonstrations and public assemblies to obtain police clearance. The long-existence and recent introduction of these measures and regulations has created a stringent environment which limits the organizing and conducting of demonstrations of any nature. Subsequently, there have not been LGBTI demonstrations in Zimbabwe.

The culture of intimidation of LGBTI organizations and activists during the Mugabe regime resulted in apathy and withdrawal of LGBTI organizations from the public scene while widespread political repression continues to reduce space for LGBTI NGOs and greater civil society.

**Recommendation :**

**11) The state should put measures to ensure a conducive working environment for LGBTI institutions to canvass for their issues and promote their visibility.**

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<sup>30</sup> <https://www.newzimbabwe.com/mnangagwa-threatens-to-deregister-meddlesome-ngos-confirms-fresh-lockdown-plans/>