

UN Convention on the Elimination of All Forms of Discrimination against Women

Report on Discrimination against Women in Zimbabwe based on Sexual Orientation and Gender Identity

Submitted to the Committee on the Elimination Discrimination against Women on 6 January 2012 for the 51st session, to be held in Geneva

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CONTENTS

1. Executive summary	3
2. Introduction	3
3. Article 1: Definition of discrimination	4
3.1 Discrimination against women based on sexual orientation is a central concern to many women's organisations in Zimbabwe	4
3.2 Recommendations: How to ensure non-discrimination based on Sexual Orientation	5
4. Article 12: Health	5
4.1 Lack of access to quality health	5
4.2 Recommendation: Attaining the highest standard of health	6
5. Conclusion	6
6. About the author	6

1. Executive Summary

Lesbian, bisexual and transgender (LBT) people living in Zimbabwe are confronted by systemic discrimination on a daily basis by the patriarchal hegemony that prevails within communities and primarily instituted by the State.

This degree of State power creates a culture of fear, hatred and exclusion. The consequences for LGBT communities are multiple and severe. Some of these consequences include extreme forms of poverty, denial of access to government services such as health and safety. The continued attacks on the bodies of Lesbians, Bisexuals and Transwomen and Transmen are experienced as a daily struggle for survival. There is limited space to exercise any form of expression pertaining to sexuality. Our desire to live without fear and to freely move in spaces with an assertive form of agency and to live in a society that appreciates and respects human rights is a goal we are fighting to achieve.

Irrespective of our sexual orientation women in Zimbabwe are not free to live and challenge collective norms and values based on the pervasive notion of culture, religion and tradition that dictates that women's livelihoods. Heteronormativity is subjectively based on the power-constructions of male-domination, political interference and the rise of religious fundamentalism. Women have been forced to carry out assigned roles and responsibilities and any deviation from these stereotypes results in the vilification and isolation from one's family, community and public life at large.

The Gays and Lesbians Association of Zimbabwe (GALZ) recently made a submission to the Constitutional Parliamentary Committee of Zimbabwe (COPAC). The 25 member panel is tasked with developing, designing and recommending a draft/new constitution. GALZ took part in the public participation process and has lobbied the committee to take a serious stand on the rights of marginalised people in Zimbabwe, particularly Lesbians, Gays, Transmen and Transwomen and not miss the opportunity to include sexual orientation in its new constitution. The submission titles, "Sexual Orientation and Zimbabwe's Constitution – A case for inclusion" clearly states that the Constitution should respect the rights of LGBT Zimbabweans must be included in the constitution.

The report covers cases of violations experienced by LBT people in Harare and Bulawayo. Most cases are linked to public participation of LBT people in national and international processes such as 16 Days of Activism and the Constitutional Reform Process. The report also highlights challenges related to discrimination of LBT people and how these impact on establishing a family, accessing education and health for LBT people as stated in articles 1, 5, 12 and 16.

2. Introduction

The Gays and Lesbians Association 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. Increased State repression forced LGBT persons to mobilise themselves against the constant harassment. Each year Zimbabwe hosts the International Bookfair. While primarily designed for publishers, various non-governmental organisations are invited by the organisers to participate. GALZ, a homophile organisation which lobbies for gay and lesbian rights, sought to participate in the 1995 Bookfair. Government issued a directive to the organisers who were to some extent dependant on the Government's cooperation to host the Fair, to bar the participation of GALZ. This directive was repeated in 1996, however, when it became uncertain that the organisers would heed the directive, Government declared a ban on the presence of GALZ, and ex post facto, sought a legal basis for the ban by invoking the Censorship Act. But the directive and ban were issued not on the basis of any acts that the members of GALZ would perform or the material they might display, but who the members were, that is, because the members were perceived as having homosexual sexual orientation. GALZ challenged the "ban" in the High Court of Harare. During the hearing in Judges' Chambers, Justice Sandura asked the Attorney-General's representatives how the Censorship Act could provide for the ban of a stand, and secondly, unknown publications. The reply was to admit that the true objective was to bar GALZ itself, as they did not want the organisation at the Bookfair, regardless of what it intended to display. It is against this backdrop that GALZ continues to:

- Participate in the constitutional making process in Zimbabwe 2009 and on-going
- Promote tolerance and appreciation of sexual diversity in Zimbabwe
- Provide safe spaces and recreational resource centre for its members

Over the past few years, GALZ has seen the need to develop a gender programme aimed at creating space for women who identify as Lesbian, Gay, Transmen, Transwomen, Women who have sex with Women and Bisexual Women. The Gender Programme works with women's rights groups in Zimbabwe, the region and internationally to seek out collaborative ways of fighting Gender Based Violence and Homophobia, appreciating the discursive links between these forms of discrimination/oppression.

Sources

The sources of data for this report are:

- GALZ archives
- GALZ Website
- Websites e.g. kubatana.net, newzimbabwe.com, ilga.org and codesria.org
- Zimbabwe's mainstream media articles

3. Article 1: Definition of discrimination

3.1 Discrimination based on sexual orientation

Zimbabwean women are not a homogenous group, we are rich in diversity. Women of varying backgrounds struggle for their right to exist within the social, cultural and political life of Zimbabwe in spite of sexism, classism and homophobia. Lesbians, Bisexuals, Transmen and gender non-conforming women are subjected to physical, verbal and psychological abuse. Despite the differences pertaining to sexual orientation, whether lesbian or heterosexual, Zimbabwean women are faced with similar challenges of fighting poverty, unemployment and discrimination based on sex and gender.

The discrimination against LBT people violates the Article 1 of the Convention that defines discrimination against women as ‘**any distinction**, exclusion or restriction made on the basis of sex which has the effect of impairing or nullifying the recognition, enjoyment or exercise by women.’ The lack of recognition for the rights of LBT people has an impact on LBT people realising and affirming other fundamental human rights, such as the right to establishing family and the right to education.

Since 2004, GALZ educational and informational materials in the form of Digital Video Disks (DVDs) have been confiscated by the Censorship Board, claiming that the material was pornographic. GALZ is challenging the case of the ceased DVDs¹.

In 2009 members of the Zimbabwe Women’s National team were in the spotlight after it was decided that all women soccer players wear dresses and ‘more feminine attire’ to root out lesbianism in soccer. Stereotyping of women and gender expression has led to restrictions in women’s expression of gender².

Two employees of the organisation, including a lesbian woman were arrested on May 21, 2010 for possession of pornographic material. For the 6 days and nights that Ellen Chademana was in the police cells, she was subjected to verbal abuse, harassment and torture at the hands of the police officers. She was forced to squat for long periods of time and hit with bottles on her knees.³

‘Exclusion’: Many LBT people are excluded from participating publically and openly without fear. In addition, the concerns and human rights abuses experienced by LBT people are often excluded from campaigns for women’s rights.

During the Sixteen Days of Activism members of the LGBT community were asked by the Police Commissioner in Bulawayo to leave a march (during which we were protesting against the corrective rape of lesbians) organised by women’s organisations in Bulawayo, citing the criminal law as the reason for the exclusion of the LGBT community⁴. The discrimination against the wider LGBT community as a result of the criminal law violates the freedom of speech, freedom of expression and freedom of conscience.

During the CEDAW reporting planning meetings held in Harare in October 2011, GALZ was not invited to participate in the process and this has resulted in the organisation producing this report independently. The exclusion of LBT people in the women’s rights space is a challenge as issues that are presented by women’s organisations and coalitions fail to reflect abuse and violations experienced by this ‘minority group’ and serve to highlight homophobia within the women’s human rights space.

‘Restriction’: Many LBT people are unable to live openly because of their fear of stigma and discrimination. LBT people have been denied employment on the basis of their sexual orientation⁵; women have been denied custody, guardianship or access to their children on the basis of their sexual orientation⁶.

¹ GALZ challenge of the Censorship Act is being handled by Gallop & Blank

² www.newzimbabwe.com, ‘Zimbabwe women’s soccer team rocked by sex, drug abuse scandal’ 11/12/2009

³ The GALZ website, www.galz.co.zw ‘Six days and 6 nights’. A case of torture was brought against the Zimbabwe Republic Police

⁴ *Sixteen Days of Activism Not for All*, Z. Ndebele, IPS News, 2 December 2010.

⁵ Recent case at the Sexual Rights Centre involved a teacher who had been forced to change his identification documents in order to secure work in a school.

During the Constitution-making process LBT people were subjected to discriminatory and derogatory attacks, undermining the 'people-centred' process, which was the rationale of the Constitution-making. Gays and Lesbians of Zimbabwe participated in the process; however the chairpersons of the Constitutional and Parliamentary Committee came out in the press saying that LGBT rights would not be included in the new constitution.

*Religious leaders have said this about the inclusion of non-discrimination on the basis of sexual orientation; 'to equate deviant sexual behaviour with the rights of women and children, minorities and other sectors of humanity who have struggled to be afforded certain inalienable basic human rights is nothing short of diabolical'*⁷.

The constitutional challenge that GALZ put forward has received attention from all quarters, primarily the political sphere. The extent to which LGBT people are able to live and participate in national programmes has been severely eroded with issues related to sexual orientation in the constitutional process being referred to the principles of the two main political parties to decide on, this is a discouraging development, especially because one of the main principles, President Robert Mugabe is well known for his homophobic stance.

"The contentious issue of homosexuality has been referred to the President Robert Mugabe and Prime Minister Morgan Tsvangirai for political discussion after the Constitution Select Committee failed to agree on the issue. The contentious issue of gay rights was referred for political discussion because there were people who were of the notion that homosexuality did not qualify to be a right. The debate was based on the feeling that the constitution is there to protect minority rights while others felt that people spoke strongly against the issue during the outreach programmes, which they argued was a clear indication they wanted it forbidden in this country".

'Nullifying the recognition, enjoyment or exercise by women': LBT people are not recognised or protected in the current Constitution of Zimbabwe. Although the criminal law does not explicitly criminalise same-sex sexual conduct between women, the 'sexual deviancy' law, which sought to criminalise any act that was perceived to be 'homosexual', has a serious impact on LBT people. The mere existence of laws criminalising homosexual acts impacts societal perceptions about 'female' sexuality prevent women from living openly as LBT⁸. In Zimbabwe, not only are the rights of LBT people not recognised, but the violations of LBT people's rights are often unpunished and justified.

*In August 2011, a lesbian woman was brutally assaulted with a bottle to the head after receiving threats for practicing homosexuality in a country where the president is opposed to such activities*⁹.

*In February 2003, 45 young women were hastily expelled from Langham High School on suspicion that they were lesbians, one in a number of cases of young women being deprived of their right to education based on their perceived sexual orientation and gender expression*¹⁰. *In 2010 and early 2011 twenty school girls from Eveline School in Bulawayo were arrested and questioned by the police for being 'lesbians'. The girls were not entitled to legal representation and their families were not contacted*¹¹, ***The Bulawayo Provincial Education Director Mr. Dan Moyo condemned acts of lesbianism at schools, saying the practice was deplorable and unacceptable.***¹² *All the girls were under eighteen years of age.*

3.2 Recommendations: Ensuring equality and non-discrimination

We recommend that the repeal of criminal and other legal provisions that prohibit and or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent; and take appropriate legislative and other measures to prohibit and eliminate discrimination in the public and private spheres on the basis of sexual orientation and gender identity.

⁶Recent case at Gays and Lesbians of Zimbabwe involving a lesbian couple with two children. The uncle of one of the women instructed police officials to arrest his niece and her partner because he heard one of the children addressing the female partner as daddy. The case was referred to Zimbabwe Lawyers for Human Rights.

⁷www.zimbabwemetro.com, 'Mugabe pushes war on gays further'

⁸'As mothers and custodians of our heritage, we stand solidly behind our president and leader on his unflinching stand against homosexuality. **Human rights should not be allowed to dehumanize us.**' ZANU-PF Women's League, 1995.

⁹The case was reported Makoni police station but due to fear of further victimisation the case referred to Zimbabwe Lawyers for Human Rights

¹⁰45 Girls expelled for lesbianism, The Herald, February 2003

¹¹Police question 20 Eveline High School girls for lesbian activity, The Chronicle, 3rd August 2010

¹²Ibid.

4. Article 12: Health

4.1 Lack of access to quality health

Lesbians, bisexual women and transgender persons are among the least understood and most elusive population affected by the AIDS pandemic. It is impossible to estimate lesbians' risk of exposure with any kind of accuracy as there little or no evidence to this effect. This situation makes it difficult for LGBT organisations to convince LBT people who have sex with women that they need to take precautions against contracting HIV and other sexually transmitted infections¹³. Lesbians, bisexual women and transwomen persons do not only engage in sexual intercourse with women and as such the whole HIV and AIDS and STI discourse excludes this group. As a result of stigma, misunderstanding, ignorance, shame and lack of information, LBT people do not seek medical care.

GALZ also notes that healthcare providers are homophobic and do not have adequate understanding of sexual orientation, gender identity and gender expression¹⁴. As a result, LBT people are unwilling to seek healthcare.

4.2 Recommendations: Attaining the highest standard of health

The state and healthcare providers should take¹⁵:

- All necessary legislative, administrative and other measures to ensure enjoyment of the right to the highest attainable standard of health, without discrimination on the basis of sexual orientation or gender identity;
- Ensure that healthcare facilities, goods and services are designed to improve the health status of, and respond to the needs of, all persons without discrimination on the basis of, and taking into account, sexual orientation and gender identity, and that medical records in this respect are treated with confidentiality
- Develop and implement programmes to address discrimination, prejudice and other social factors which undermine the health of persons because of their sexual orientation or gender identity;

5. Conclusion

We summarise that much of the government's objection to equality and non-discrimination for Lesbians, bisexual women and transgender people in all aspects of their life stems from lack of political will. The State and government of Zimbabwe use culture, religion and tradition as a basis for continued hate-speech and discrimination of the LGBT community with assertions that homosexuality has led to the disintegration of the moral fabric of society. We ask that the State and government of Zimbabwe uphold its moral obligation to protect and extend all human rights to LBT people.

We urge the State and government of Zimbabwe to ratify CEDAW and ensure its domestication into Zimbabwean law.

6. About the author

This report is the product of the Gays and Lesbians of Zimbabwe, Gender Office, LBT members of the organisation in and outside of Zimbabwe; Sexual Rights Centre (SRC).

For any corrections, omissions and feedback about this report, readers are welcome to write to gender@galz.co.zw.

¹³ The Zimbabwe National HIV/AIDS Strategic Plan recognises Men who have sex with men (MSM) as a vulnerable group, but there is no mention of LBT people or Women who have sex with women (WSW)

¹⁴ WSW/LBT research conducted by GALZ in August 2010

¹⁵ Yogyakarta Principles, Principle 17.

