



Zimbabwe – Researched and compiled by the Refugee Documentation Centre of Ireland on 3 January 2019

Information in relation to penalties in law for male homosexuality and also information in relation to how often people are prosecuted and how often and what penalties are applied in practice - any recent incidents - any indication as to frequency

In a section headed “Sodomy” (section 73) the Criminal Law (Codification and Reform) Act of Zimbabwe states:

(1) Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act, shall be guilty of sodomy and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding one year or both.

(2) Subject to subsection (3), both parties to the performance of an act referred to in subsection (1) may be charged with and convicted of sodomy.

(3) For the avoidance of doubt it is declared that the competent charge against a male person who performs anal sexual intercourse with or commits an indecent act upon a young male person—

(a) who is below the age of twelve years, shall be aggravated indecent assault or indecent assault, as the case may be; or

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

(c) who is of or above the age of twelve years but below the age of sixteen years and with the consent of such young male person, shall be performing an indecent act with a young person.” (Parliament of Zimbabwe (3 June 2005) *Zimbabwe: Criminal Law (Codification and Reform) Act*)

The Department of Foreign Affairs and Trade (DFAT) of Australia, in a section titled “Sexual Orientation and Gender Identity” (paragraph 3.58), states:

“While the Constitution guarantees rights to non-discrimination, privacy, and freedom of expression, thought and association, ZANU-PF firmly opposed the inclusion of constitutional rights for Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons. The Constitution specifically prohibits same sex marriage. Section 73 of the Criminal Law Act criminalises homosexuality, which the Act refers to as ‘sodomy.’ Those found guilty of sodomy are liable

to a fine, imprisonment for up to one year, or both.” (Department of Foreign Affairs and Trade (DFAT) (11 April 2016) *DFAT Country Information Report: Zimbabwe*, p.14)

In paragraph 3.59 this report states:

“In practice, prosecutions of consensual same-sex sexual conduct are rare. The authorities more commonly harass LGBTI persons using loitering, indecency and public order statutes, although violations are under-reported because of the stigma attached to the LGBTI community. In 2014, Gays and Lesbians Zimbabwe (GALZ) reported 41 cases of arbitrary arrest, violence, harassment, unfair dismissal and forcible displacement involving LGBTI persons. On 21 December 2014, armed men attacked 35 people at a party at which homosexuals were present in Harare. A civil servant who attended the party was subsequently dismissed from his job. In September 2015, the employee successfully challenged his dismissal, although he has not yet been reinstated to his previous role.” (ibid, pp.14-15)

A Voice of America news report states:

“Zimbabwe is one of the least accepting countries in the world for gay, lesbian and transgender people. A 2006 revision to the country's criminal code expands the penalty for sodomy to include acts that “would be regarded by a reasonable person as an indecent act.” This could include two men holding hands, hugging or kissing and could carry an extended prison term.” (Voice of America News (12 January 2017) *Gay Zimbabweans Fight Stigma, Harsh Laws*)

This report also states:

“Gay rights advocates in Zimbabwe say the laws in the country present something of a Catch-22 for the LGBT community. While it is not technically illegal to be gay in Zimbabwe, it is illegal to act on it.

‘There is no law that states that one cannot be gay. It only becomes a crime once you start committing homosexual acts in public,’ said Mojalifa Mokwele, a gay rights activist in Zimbabwe. ‘If you take a look at the constitution in Zimbabwe, it is not a crime to stand in the streets and publicly state that he or she is homosexual. It is not illegal to be gay in Zimbabwe. Being homosexual is only regarded criminal in Zimbabwe once you publicly commit homosexual acts.’” (ibid)

A report from Reuters states:

“Zimbabwe’s 2013 constitution prohibits same-sex marriage but is silent on gay relations. Laws criminalising homosexuality in Zimbabwe carry penalties of up to three years in jail, and police often arrest gays, then set them free without bringing charges.” (Reuters (4 September 2017) *Worse than dogs and pigs: life as a gay man in Zimbabwe*)

A report from Amnesty International, in a paragraph headed “Sexual and reproductive rights denied” states:

“Mugabe’s uncompromising opposition to LGBTI rights saw security forces carry out numerous raids and arrests targeting LGBTI activists, though none were convicted.” (Amnesty International (4 December 2017) *Zimbabwe: Robert Mugabe's legacy*)

The 2018 Bertelsmann Stiftung Transformation Index country report for Zimbabwe states:

“There is no de jure discrimination against certain social, ethnic, sexual or religious groups. However, same-sex marriages are illegal, and the president publicly talks disdainfully about homosexuality. It is widely known that the police persecute homosexuals, while access to legal representation, education and health care for homosexuals is limited.” (Bertelsmann Stiftung Transformation Index(January 2018) *BTI 2018 Country Report – Zimbabwe*, p.30)

The 2018 Human Rights Watch report for Zimbabwe, in a paragraph headed “Women’s and Girls’ Rights, Sexual Orientation, and Gender Identity”, states:

“Section 73 of the Criminal Law Act punishes consensual same-sex conduct between men with up to one year in prison or a fine or both.” (Human Rights Watch (18 January 2018) *World Report 2018 – Zimbabwe*)

The 2018 Freedom House report for Zimbabwe, in response to the question “Do laws, policies, and practices guarantee equal treatment of various segments of the population? “, states:

“While discrimination on the basis of a broad range of characteristics is prohibited under the 2013 constitution, discrimination on the basis of sexual orientation or gender identity is not expressly prohibited. Sex between men is a criminal offense and can be punished with a fine and up to a year in prison.” (Freedom House (15 March 2018) *Freedom in the World 2018 – Zimbabwe*)

The 2017 US Department of State country report for Zimbabwe, in a section titled “Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity”, states:

“The constitution does not prohibit discrimination based on sexual orientation and gender identity. According to the criminal code, “any act involving physical contact between men that would be regarded by a reasonable person to be an indecent act” carries a penalty if convicted of up to one year in prison or a fine up to \$5,000. Despite that, there were no known cases of prosecutions of consensual same-sex sexual activity. Common law prevents gay men and, to a lesser extent, lesbians from fully expressing their sexual orientation. In some cases it criminalizes the display of affection between men.” (US Department of State (20 April 2018) *2017 Country Reports on Human Rights Practices – Zimbabwe*, p.42)

This response was prepared after researching publicly accessible information currently available to the Research and Information Unit within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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