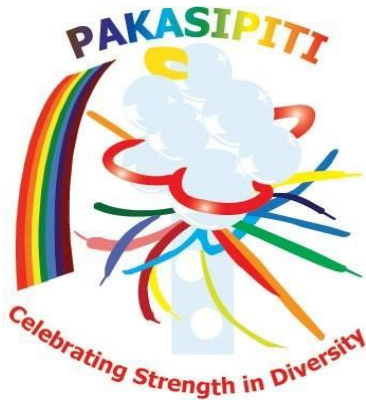


Submission to the UN Committee on the Elimination of Discrimination Against Women

75th Session (10-28 February 2020)

Review of Zimbabwe

Pakasipiti Zimbabwe



Pakasipiti is an organisation committed to promoting a Zimbabwean LBT community that enjoys equality and visibility. We work to ensure that LBT persons enjoy the full range of human rights, secure in the knowledge that we are recognized as full citizens, with rich and diverse cultures, through personal and organizational growth. Our work is shaped by a feminist understanding, informed by research, and strengthened by the claiming of social and economic power.

Patience Mandishona, Director

pakasipiti@gmail.com

Coalition of African Lesbians



The Coalition of African Lesbians is a feminist, activist and Pan-Africanist network of 14 organisations in 10 countries in sub-Saharan Africa committed to advancing freedom, justice and bodily autonomy for all women on the African continent and beyond.

Anthea Taderera, advocacy officer

anthea@cal.org.za

Sexual Rights Initiative



The SRI is a coalition of national and regional organizations based in Canada, Poland, India, Argentina and South Africa that work together to advance human rights related to sexuality at the United Nations.

Juan S. Jaime P., advocacy advisor for treaty bodies

juan@srigeneva.com

Key Words: bodily autonomy, bodily integrity, safety, non-discrimination, gender-based violence, right to health, HIV,

Introduction

1. Social and religious prejudice exclude non-normative sexualities by labeling them as un-African and against the teachings of churches.¹ Since both religion and culture are fundamental to the values and attitudes of Zimbabwean society, LGBTI persons find themselves excluded socially, culturally, religiously, economically, and politically – and face stigma and violence. LGBTI persons experience being forced out of school, dismissed from workplaces, evicted from places of accommodation or shelter, often going through forced migration and internal displacement, arbitrary monitoring, surveillance, search, arrest and detention, physical and mental abuse, torture and rape because of their sexual orientation and gender identity or expression.
2. Though the current legislative framework does not criminalize LGBTQ women, women often find themselves arrested and detained by police for acts they label as ‘indecent’. These matters rarely reach the courts; they often end with these arbitrary arrests and unlawful detentions designed to act as a deterrent to ‘homosexuality’. The impacts of these violations are multiple and complex and include consequences such as physical, emotional, and mental trauma; lack of access to basic socio-economic rights such as food, shelter, work, education and health that goes beyond the access issues that the population in general are faced with; social exclusion and isolation. The media also plays a big role in pushing hate language, stigma and discrimination.
3. Sexual orientation and gender identities and expressions are inextricably connected with class, race, geography, age, gender, sexuality, and disability, amongst others. As such, we make links between civil and political rights and social and economic rights and ensure that solidarity and collective action across movements are built in recognition of the common oppressions faced by those of us on the margins. There is a crisis based on the rights to autonomy, freedom, dignity and equality and the body is one key site of struggle and power in this crisis. Hence, we are concerned about the situation of sex workers, women and other people living with HIV, young women’s sexuality [age of consent issues] and sexual exploitation [e.g., through forced marriage].

1. Gender Based Violence (GBV)

4. The CEDAW Committee has recognized that GBV is a human rights violation that results from structural discrimination. It has recommended that States put in place systems to collect comprehensive and disaggregated data about all forms of violence against women, including disaggregated by type of violence and by the relationship of the perpetrator to the victim, as well as age, sex, rural/urban status, and other relevant factors. It has called on States to also collect data on the sentence given to the perpetrator, as well as prosecutions and convictions and remedies or reparations given to the victims, including compensation. States must ensure that its laws and policies to prevent and punish GBV apply to all women irrespective of their marital status, sexual orientation and gender identity.
5. Zimbabwe, during its second cycle review of the UPR, accepted 10 recommendations related to GBV, including recommendations to adjust the national legal framework, update public policies, strengthen

¹ This introduction is based on *Case study: Pakasipiti, Zimbabwe: Promoting human rights and fundamental freedoms for LGBTQ women* in Mitini Nepal, FARUG, Pakasipiti Zimbabwe & Womankind, *Making Visible: The Lived Realities of LGBTQ+ across Nepal, Uganda and Zimbabwe*, (2019) Available at: <https://www.womankind.org.uk/docs/default-source/default-document-library/making-visible---the-lived-realities-of-lbtqi-across-nepal-uganda-and-zimbabwe.pdf>

relevant State institutions and provide legal assistance and adequate redress to survivors of GBV.² The Committee on the Rights of the Child (CRC) on its Concluding Observations to Zimbabwe in 2016 raised concerns around the high rate of sexual violence against adolescent girls and evidence of underreporting of such cases. It also supported the recommendations issued by the CEDAW Committee to address discrimination and gender stereotyping that marginalizes women and girls, making them more vulnerable to GBV.³ Despite legal changes, almost no progress has been made in implementing these recommendations.

a. Country situation

6. Since the previous review of Zimbabwe under CEDAW, a new constitution was approved. The Constitution of Zimbabwe, Section 25, calls for the adoption of measures for the prevention of domestic violence. The government, with the support of UN agencies, has created One Stop Centres for survivors of Gender Based Violence (GBV). Some reports indicate that these centers are often overcrowded throughout the country.⁴ Despite normative changes and policy measures,

Women's experience with physical violence has changed little over the past decade: 36 percent of women age 15-49 reported having ever experienced physical violence since age 15 in the 2005-06 ZDHS, 30 percent in the 2010-11 ZDHS, and 35 percent in the 2015 ZDHS (Figure 16.1). In all three surveys, women most commonly reported that the person committing the physical violence is a current husband/partner, followed by a former husband/partner.⁵

The legal framework in Zimbabwe, especially the Domestic Violence Act (Chapter 5:16), does not guarantee legal redress on cases reported by LGBTQ persons.

b. Recommendations

We suggest the Committee issues the following recommendations to the state of Zimbabwe:

- Recognize diversity of gender and sexuality in laws and policies addressing gender-based violence and discrimination.
- Openly condemn violence based on sexual orientation, gender identity, and expressions and introduce provisions that punitively address any actions that promote or result in such violence.
- Adopt specific protocols to unify procedures for reporting cases of violence and centralize existing data collection systems to compile, disaggregate and periodically update data, considering cases of violence against LGBTQ persons and their narratives, with a view to understanding more broadly and precisely structural impacts on violence and discrimination.
- Incorporate to the National Action Plan on Sexual Harassment the element of sexual harassment on the basis of sexual orientation, gender identities and expressions.

² Human Rights Council, Report of the Working Group of the UPR for Zimbabwe, A/HRC/34/8 (2016). Recommendations 131.12, 131.20, 131.57, 131.59, 131.70, 131.71, 131.72, 131.73, & 131.83.

³ CRC Committee, Concluding Observations to Zimbabwe, paras. 26-27, CRC/C/ZWE/CO/2 (2016).

⁴ Revai Makanje Aalbaek, One-stop centres for violence victims are overwhelmed. The Zimbabwean. December 3, 2014. Available at: <https://www.thezimbabwean.co/2014/12/one-stop-centres-for-violence/>

⁵ Zimbabwe National Statistics Agency & ICF International, Zimbabwe Demographic and Health Survey, 2015. <https://dhsprogram.com/pubs/pdf/FR322/FR322.pdf>

2. Access to comprehensive health services

7. The CEDAW Committee has consistently called for a prioritisation of women who have been marginalized, like women with non-normative sexual orientation and/or gender identity, sex workers, migrant women, and women with disabilities.⁶ As a result, States must ensure their access to health services and take measures to punish discriminatory treatment against them and address their stigmatization and social exclusion.⁷ Some recommendations made by the Committee to Zimbabwe during its last review included some measures to tackle discrimination against LBTQ women. However, the Committee did not address the impact of that stigma and discrimination on their socioeconomic wellbeing, including their enjoyment of their right to health and the provision of social determinants of health.

a. Country situation

8. Due to the economic crisis in Zimbabwe access to basic health services has become a challenge and with the existence of stigma and discrimination for LBTQ persons in health service facilities, most of the community members shy away from trying to access the services and resort to other methods like self-medicating. LBTQ women need basic health services, recognition of their humanity, freedom to found a family, privacy among many other rights. But in reality, their rights, including access to health services, are denied on the basis of sexual orientation and gender identity. A lack of data and research around health issues affecting LBTQ women prevents them from accessing key and essential sexual, reproductive health services. “Public health literature recognizes the stigma and discrimination [...] when attempting to access health services, calling for deliberate strategies to ensure [...] access to counselling, testing and HIV/AIDS treatment, where necessary.”⁸
9. WHO has highlighted some significant progress the state has made in addressing particular issues related to health.⁹ However, it has also pointed to the frail stability of the health system and its budgeting. Stigma and discrimination are not only a barrier for access, they also obstruct a proper diagnosis of how women who are marginalized due to their gender or sexuality and prevent them from benefiting from any progress done in public policy and delivery of services. Their voices are missing from the public discussion and their narratives of both struggle and agency, remain largely untold.
10. Civil society organisations have consistently reported cases of discrimination due to sexual orientation and gender identity. GALZ has reported the prevalence of these cases, given the impunity surrounding them and the failure of Zimbabwe’s legal system to protect sexual and gender minorities:¹⁰

“A review of the violations reports between 2012 and 2017 shows that a number of complainants experienced discrimination in public health care facilities simply because of their sexual orientation or gender identity. The adverse effects of such unfriendly environments were reduced health seeking behaviours among LGBTI persons, which resulted in poor health among some of

⁶ CEDAW, General recommendation No. 24 (1999): Article 12 of the Convention (women and health).

⁷ CEDAW, Concluding Observations: Paraguay (2017), para. 37, U.N. Doc. CEDAW/C/PRY/CO/7

⁸ The Other Foundation, *Canaries in the coal mines: An analysis of spaces for LGBTI activism in Zimbabwe*, http://theotherfoundation.org/wp-content/uploads/2017/02/Canaries_Zimbabwe.pdf The quote makes reference to men who have sex with men, but understanding that the effects of stigma and discrimination work on the basis of gender and sexuality and thus affect LBTQ women as well.

⁹ WHO Regional Office for Africa, *WHO Country Cooperation Strategy 2016-2020 Zimbabwe*, <https://apps.who.int/iris/bitstream/handle/10665/254405/ccs-zwe-2016-2020-en.pdf>

¹⁰ GALZ, *Actus Reus: An analysis of human rights violations against LGBTI persons in Zimbabwe (2011-2017)*. Available at: http://galz.org/wp-content/uploads/2018/08/Violations-Report_Print_Final-1-1.pdf

them. Prejudice and lack of tolerance towards LGBTI individuals from health workers effectively interferes with their right to life and health and results in some individuals who are living with STIs going without treatment for long periods.”¹¹

b. Recommendations

- Review and remove obstacles faced by lesbian, bisexual, transgender and queer persons, women with disabilities, and migrant women in gaining access to public health services and obtaining free antiretroviral treatment.
- Ensure health providers deliver accurate information about sexual and reproductive health and rights, including responsible sexual behavior and prevention of early pregnancy and sexually transmitted infections, while also addressing negative stereotypes and discriminatory attitudes, with a view to ensuring that these do not interfere with access to information and education on sexual and reproductive health and rights.
- Develop and sustain a national HIV/AIDS strategy on stigma reduction, treatment and support, as well as prevention, ensuring availability, accessibility, affordability and quality service provision for those who have been discriminated and stigmatized, particularly on the grounds of sexual orientation, gender identity, expression and their status as sex workers.

3. Safety, security, non-discrimination and bodily autonomy

11. In its 2016 report on the instrumentalization of women’s bodies and the negation of women’s bodily autonomy, the Working Group on the issue of discrimination against women in law and practice stressed that

“the discriminatory use of criminal law, punitive sanctions and legal restrictions to regulate women’s control over their own bodies is a severe and unjustified form of State control. This can include punitive provisions in criminal, civil and administrative laws and regulations governing extramarital consensual sex, same-sex consensual adult relations, gender non-conforming expressions, provision of reproductive and sexual education and information, termination of pregnancy and prostitution/sex work. The enforcement of such provisions generates stigma and discrimination and violates women’s human rights. It infringes women’s dignity and bodily integrity by restricting their autonomy to make decisions about their own lives...”¹²

12. CEDAW Committee has noted that the “definition of discrimination includes gender-based violence.”¹³ It has also developed, through its general recommendations No. 19 and No. 28, the core obligations of State parties under article 2 of the Convention to exercise due diligence to protect lesbian, bisexual and transgender persons against discrimination and violence, by including sexual orientation and gender identity in relevant legislation. States must protect lesbian, bisexual, transgender and queer persons from state actors’, particularly law enforcement, discriminatory dismissal of complaints, revictimization,

¹¹ Id.

¹² Working Group on the issue of discrimination against women in law and in practice, Report on the issue of discrimination against women with regard to health and safety, (2016) para. 76, U.N. Doc. A/HRC/32/44

¹³ CEDAW, General Recommendation 19 (1992): violence against women, paras 6-7.

and outright harassment and must ensure perpetrators, both state and non-state actors, do not benefit from impunity created by these conducts.

a. Country situation

13. There is an undeniable crisis of violence and other violations and of discrimination against individuals on the basis of sexual orientation and gender identity. The violations include, but are not limited to rape, torture, physical and mental abuse, murder, arbitrary search, arrest and detention, forced migration and internal displacement, dismissal from work, forced out of school, loss of accommodation and shelter, misrepresentation in, by and through the media, monitoring and surveillance.
14. Despite the fact that the current legislative under the Sexual Offences Act of Zimbabwe 8/2001 does not speak to criminalization of LGBTQ women, women often find themselves arrested and detained by police for acts they label as ‘indecent’ and rarely do such matters reach the courts, they often end with these arbitrary arrests and unlawful detentions designed to act as a deterrent to ‘homosexuality’. Due to the fact that they cannot charge those arrested under any act or law, law enforcements agents usually just then charge with what they term “indecency” under Section 77 Of the Criminal Law Codification And Reform Act (Chapter 9:23).
15. Police harassment and discrimination persuades persons from reporting cases of assault.

“It was noted in some cases that, when an LGBTI person attempts to report assault to the police, often the focus would shift from the assault as the reported case to the sexual orientation or gender identity of the complainant. This discouraged many LGBTI persons from reporting assault, fearing stigmatization, humiliation and in some cases arrest and detention themselves.”¹⁴
16. Police has targeted activists due to their gender as well as their sexual orientation, gender identity and expression. Civil society organisations have reported cases where the police have used their information to produce a list of activists to target and detain.¹⁵ Detentions were made under fabricated charges or even without charges; most cases still under impunity.¹⁶ Threats and violence towards LBQ persons in Zimbabwe are shaped by their gender, other aspects of their identities and their socio-political context including class, race, age, rural or urban. There is institutional discrimination especially in relation to access to justice.
17. The impacts of these violations are multiple and complex and include consequences such as physical, emotional and mental trauma; lack of access to basic socioeconomic rights such as food, shelter, work, education and health that goes beyond the access issues that the population in general are faced with; social exclusion and isolation. This introversion and isolation limit the ability of LBT women to fully exercise their rights as full citizens in their nation. They deserve the right to move freely as provided in the National Constitution of Zimbabwe. These rights however can easily be compromised and disregarded if the humanity and dignity of LBT women is not recognized to begin with. The right to associate and assemble is disregarded and communities face prosecutions and closure of spaces and organizations.

¹⁴ Supra note 10

¹⁵ Id.

¹⁶ Id.

b. Recommendations

- Provide effective protection against discrimination and violence against lesbian, bisexual, transgender and queer persons, in particular through the adoption of anti-discrimination legislation and the revision of the existing discriminatory laws to prohibit intersecting forms of discrimination and ensure legal redress.
- Denounce, prosecute and provide redress for attacks on the human dignity and integrity of lesbian, bisexual, transgender and queer persons, including by raising public awareness of their rights in all social contexts, and adopt measures to prevent hate crimes.
- Intensify efforts to combat hate crimes, family violence and hate speech against lesbian, bisexual, transgender, and queer persons, both perpetrated by state and non-state actors.
- Guarantee that women human rights defenders and LGBTQ activists can freely carry out their work protecting women's human rights and exercise their rights to freedom of peaceful assembly and association.
- Amend the Public Order and Security Act and repeal articles 73 and 77 of the Criminal Code to align with regional and international conventions and treaties that Zimbabwe is signatory to.