



Zimbabwe – Researched and compiled by the Refugee Documentation Centre of Ireland on 5 September 2012

Information on whether homosexuals (and especially lesbians) are prosecuted under Zimbabwean criminal law on account of their sexual orientation. Is it possible to bring a private prosecution against somebody whom you believe is homosexual?

A document published on the *Gays and Lesbians of Zimbabwe* (GALZ) website states:

“There is a common misconception amongst many Zimbabweans that it is illegal to be homosexual in Zimbabwe. This is a myth since it is not possible to legislate against what people think, only against what people express or do. Nevertheless, with ordinary Zimbabweans and law enforcers being given carte blanche by national leaders to arrest homosexuals on the streets, many LGBTI people in Zimbabwe live in fear of blackmail and being arrested for consensual sexual acts.” (Gays and Lesbians of Zimbabwe (undated) *GALZ and the Law*)

A section titled “73 Sodomy” of the *Criminal Law (Codification And Reform) Act* 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.
- (Republic of Zimbabwe (July 2006) *Criminal Law (Codification And Reform) Act*)

The 2012 *US Department of State* country report on Zimbabwe, in a section titled “Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity”, states:

“The criminal code's definition of sodomy includes 'any act involving physical contact between males that would be regarded by a reasonable person to be an indecent act.' Sodomy carries a penalty of up to one year in prison or a fine up to \$5,000. There were no known cases of sodomy charges being used to prosecute consensual same-sex sexual activity. Common law prevents gay men, and to a lesser extent lesbians, from fully expressing their sexual orientation and, in some cases, criminalizes the display of affection between men.” (US Department of State (24 May 2012) *2011 Country Reports on Human Rights Practices – Zimbabwe*)

Paragraph 31 of a judgment from the *UK Upper Tribunal* refers to the evidence of expert witness DR Oliver Phillips as follows:

“Dr Phillips told us that it is not possible to offer any clear idea of how many prosecutions of men for homosexual offences have taken place in recent years, due to lack of reporting. The last Supreme Court report he can identify dates from 1991. It relates to a consensual homosexual act in a private place. A sentence of 10 months imprisonment with labour was reduced on appeal to a small fine. Dr Phillips considers that most prosecutions would take place in the Magistrates Court. They would never reach the High Court, Supreme Court or public ear and would go unreported.” (United Kingdom: Upper Tribunal (Immigration and Asylum Chamber) (8 January 2012) *LZ (homosexuals) Zimbabwe v. Secretary of State for the Home Department*)

In paragraph 34 this judgment quotes the opinion of GALZ, stating

“GALZ at interview said that they were not aware of any cases of consenting adults prosecuted for sodomy in 2009, 2010 or 2011. They referred to the Bindura case of 2010. They described it as a case of a male gay couple reported by their landlady, resulting in acquittal. Cases of threatened arrest and complaints to the police, not resulting in prosecution or even in many cases of detention, were said to run at 3-4 per month. There were no current prosecutions.” (ibid, p.7)

Paragraph 35 refers to the opinion of the *Zimbabwe Lawyers for Human Rights*, stating:

“ZLHR were similarly not aware of any convictions for sodomy in 2009, 2010 or 2011. They were aware of threats of arrest being used regularly to harass homosexual men and women.” (ibid, p.8)

In Paragraph 41 this report comments on the absence of reports of the prosecution of homosexuals in Zimbabwe, stating:

“Zimbabwe has a lively press, although largely subservient to President Mugabe. There are active human rights organisations which follow gay and lesbian issues, and publish reports. If consensual homosexual conduct was being prosecuted, even in the lower courts with minimal penalties, we consider that there would have been some press reporting, and that organisations like GALZ and ZLHR would know about it. Dr Phillips frankly accepted that he was proceeding upon assumptions and not upon available data, and he thought that the incidence of such prosecution would be low. The other sources before us, including the US State Department Country Report, consistently state that there have been no recent prosecutions of consensual homosexual conduct.” (ibid, pp.8-9)

A *Zimbabwe Herald* article on the conviction of two juveniles for sodomy states:

“Two juveniles from two high schools in Masvingo will be caned three strokes each after they were convicted of sodomy by a regional magistrate last Friday. The pair -- both aged 16 -- were convicted of sodomy on their own plea of guilty after they were caught being intimate by an alert policeman in a bushy area on the outskirts of the city last week. Their trial was heard by Mrs Esther Muremba in camera. Mrs Muremba sentenced the two to receive moderate corporal punishment of three strokes each to be administered in private by a designated prison officer in Masvingo. She conditionally suspended a one- year jail sentence for the two for five years.” (Zimbabwe Herald (24 March 2009) *Zimbabwe: Juveniles to Be Caned for Sodomy*)

A report from *Front Line Defenders* states:

“On 21 May 2010, police raided the offices of Gays and Lesbians of Zimbabwe (GALZ) in Milton Park, Harare, and arrested human rights defenders Ms Ellen Chademana and Mr Ignatius Muhamba, both employees of GALZ. GALZ is an association founded in 1990 that advocates social tolerance for sexual minorities and the repeal of homophobic legislation in Zimbabwe.” (Front Line Defenders (25 May 2010) *Zimbabwe: Detention of human rights defenders Ms Ellen Chademana and Mr Ignatius Muhamba, members of Gays and Lesbians of Zimbabwe (GALZ)*)

A report from *African Activist* states:

“Bulawayo24 News is reporting that five men were arrested in Domboshava near Harare on allegations of ‘being gay and committing acts of sexual immorality.’ The men are currently being detained at Domboshava Police Station awaiting trial.” (African Activist (8 September 2011) *Five Men Arrested in Zimbabwe for Being Gay*)

This report also states:

“Bulawayo24 News reported in June that Zimbabwe police were investigating Book Café in Harare after a group of LGBTI persons showed up for a 4 June concert by afro-pop artiste John Pfumojena. Some members of the group were dressed in drag and showed public signs of affection. Criminal Investigation Department (CID) spokesperson Inspector Zimbili said, ‘The law is very clear on that matter; if there was a gay parade or festival at that mall, we are going to carry a full investigation.’” (ibid)

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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