

# **Country Information and Guidance**

## **Zimbabwe: Sexual orientation and gender identity**

October 2014

# Preface

This document provides guidance to Home Office decision makers on handling claims made by nationals/residents of Zimbabwe as well as country of origin information (COI) about Zimbabwe. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether - in the event of a claim being refused - it is likely to be certifiable as 'clearly unfounded' under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the guidance contained with this document; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Within this instruction, links to specific guidance are those on the Home Office's internal system. Public versions of these documents are available at <https://www.gov.uk/immigration-operational-guidance/asylum-policy>.

## Country Information

The COI within this document has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the [European Asylum Support Office's research guidelines, Country of Origin Information report methodology](#), dated July 2012.

## Feedback

Our goal is to continuously improve the guidance and information we provide. Therefore, if you would like to comment on this document, please email: [CPI@homeoffice.gsi.gov.uk](mailto:CPI@homeoffice.gsi.gov.uk).

## Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office's COI material. The IAGCI welcomes feedback on the Home Office's COI material. Information about the IAGCI's work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's website at <http://icinspector.independent.gov.uk/country-information-reviews/>

It is not the function of the IAGCI to endorse any Home Office material, procedures or policy.

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# 1. Guidance

## 1.1. Basis of claim

- 1.1.1 Fear of mistreatment by the Zimbabwe authorities or by non state actors due to the person's sexual orientation/gender identity or perceived sexual orientation.

See Asylum Instructions on [Considering the asylum claim and assessing credibility](#)

## 1.2. Summary of issues

- What is the person's actual, or perceived, sexual orientation/gender identity?
- Do gay men, lesbians, bisexual or transgender (LGBT) persons in Zimbabwe form a particular social group (PSG)?
- Is the person at real risk due to their sexual orientation/gender identity?
- Is there effective protection for LGBT persons?
- Is the person able to internally relocate within Zimbabwe to escape that risk?

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## 1.3. Consideration of issues

### What is the person's actual or perceived sexual orientation?

- 1.3.1 Decision makers must consider whether the person's account of their experiences is reasonably detailed, internally consistent and credible as well as being externally credible (i.e. consistent with generally known facts and the country information).

See [country information](#)

See asylum instructions on [Sexual orientation issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

### Do lesbians, gay men, bisexuals and transgender (LGBT) persons in Zimbabwe form a particular social group (PSG)?

- 1.3.2 In the [Court of Justice of the European Communities judgement for the joined cases of C-199/12 to C-201/12, dated November 2013 \(\[2013\] WLR\(D\) 427, \[2013\] EUECJ C-199/12\)](#), the Court held that 'the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group.' (Court (Fourth Chamber): paragraph 1).

See [CJEC cases of C-199/12 to C-201/12 \(paragraphs 48-49\)](#)

- 1.3.3 Section 73 of the Criminal Law (Codification and Reform) Act which became effective from July 2006 criminalises same sex acts by gay men. Furthermore, other LGBT persons are also considered members of a particular social group because they share a common characteristic that cannot be changed and,

See [country information](#)

based on an assessment of the country information, they have a distinct identity in Zimbabwe which is perceived as being different by the surrounding society.

- 1.3.4 Lesbians, gay men, bisexual and transgender persons from Zimbabwe should therefore be considered to form a particular social group (PSG) within the meaning of the 1951 UN Refugee Convention.
- 1.3.5 Although LGBT persons in Zimbabwe form a PSG, this does not mean that establishing such membership will be sufficient to make out a case to be recognised as a refugee. The question to be addressed in each case will be whether the particular person will face a real risk of persecution on account of their membership of such a group.

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### **Is the person at real risk due to their sexual orientation?**

- 1.3.6 In the [Court of Justice of the European Communities judgement for the joined cases of C-199/12 to C-201/12, dated November 2013 \(\[2013\] WLR\(D\) 427, \[2013\] EUECJ C-199/12\)](#), the Court held that “Article 9(1) of Directive 2004/83, read together with Article 9(2)(c) thereof, must be interpreted as meaning that the criminalisation of homosexual acts per se does not constitute an act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin which adopted such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution”
- 1.3.7 Male homosexual behaviour is criminalised and punished with custodial sentences, but the country guidance case of [LZ \(homosexuals\) Zimbabwe CG \[2011\] UKUT 487 \(IAC\) \(26 January 2012\)](#) found that prosecutions are very rare. Lesbianism is not criminalised. Although some homosexuals suffer discrimination, harassment, intimidation, violence and blackmail from the general public and the police, the Upper Tribunal concluded in [LZ](#) that there is no general risk to gay men or lesbians and “corrective rape” is rare, and does not represent a general risk.
- 1.3.8 However the Upper Tribunal went on to say that personal circumstances place some gay men and lesbians at risk. Although not decisive on its own, being openly gay may increase risk. A positive HIV/AIDS diagnosis may be a risk factor. Connections with the elite do not increase risk.
- 1.3.9 Gay rights activists and other persons who openly campaign for gay rights in Zimbabwe face the risk of arbitrary arrests by the police, and the harassment by state agents .
- 1.3.10 Given the continued anti-homosexual rhetoric and reality in

See Asylum Instruction on [Considering the asylum claim and assessing credibility](#)

See [caselaw](#)

See [country information](#)

Zimbabwe, decision makers should ensure that they consider the latest country of origin information. Decision makers must consider each case on its facts taking account of the person's past experience of any ill-treatment in Zimbabwe.

1.3.11 The Supreme Court in the case of [HJ \(Iran\)](#) found that if a person chooses to live discreetly because he/she wants to avoid embarrassment or distress to her or his family and friends he/she will not be deemed to have a well founded fear of persecution. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to her or his sexual orientation. If a person chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well founded fear of persecution

See asylum instruction on [Sexual orientation issues in the asylum claim](#)

### **Is there effective protection for LGBT persons?**

1.3.12 Where the person's fear of ill treatment is by the state authorities, they would be unable to apply to these authorities for protection.

See Asylum Instruction on [Considering the asylum claim and assessing credibility](#)

1.3.13 As regards fear of ill-treatment by non-state actors, the Upper Tribunal in [LZ](#) found that the police and other state agents do not provide protection.

See [caselaw](#)

### **Is the person able to internally relocate within Zimbabwe to escape any risk?**

1.3.14 Homophobic attitudes are prevalent throughout the country. Where gay men and lesbians do encounter local hostility they may be able to avoid this by moving elsewhere in Zimbabwe, but only if the risk is not present there and if it would not be unduly harsh to expect them to do so.

See [country information](#)

1.3.15 On the question of internal relocation, the Upper Tribunal in [LZ](#) confirmed that a gay man or lesbian at risk in his or her community can move elsewhere, either in the same city or to another part of the country. He or she might choose to relocate to where there is relatively greater tolerance, such as Bulawayo, but the choice of a new area is not restricted. The option is excluded only if personal circumstances present risk throughout the country.

See Asylum Instruction on [Internal Relocation](#)

See [caselaw](#)

See asylum instruction on [Sexual orientation issues in the asylum claim](#)

1.3.16 Decision makers must however take account that the Supreme Court in the case of [HJ \(Iran\)](#) made the point that internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.

See [caselaw](#)

1.3.17 Special attention should also be given where the person is a lesbian or perceived as a lesbian, as [LZ](#) found that lesbians "on their own or together, may face greater difficulties than gay men"

(para. 116 of the determination).

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## 1.4. Policy summary

**Although societal hostility, discrimination, stigma, state sponsored discrimination, harassment, intimidation, arbitrary arrest, extortion, forced marriage, “corrective rape” and violence against LGBT persons exist in Zimbabwe, the courts have found that that there is no general risk to gay men or lesbians or transsexuals?.**

**Personal circumstances do however place some gay men and lesbians at risk and, although not decisive on its own, being openly gay may increase the risk. A positive HIV/AIDS diagnosis may increase risk. Lesbians, living on their own or together, may face greater difficulties than gay men. Gay rights activists and other persons who openly campaign for gay rights in Zimbabwe are at risk of arbitrary arrest and harassment which amount to persecution.**

**Where there is a real risk, no effective protection is provided by the authorities. Where LGBT persons do encounter local hostility they may be able to avoid this by relocating elsewhere in Zimbabwe if it would not be unduly harsh to expect them to do so.**

**Where personal circumstances do place an LGBT person at real risk of persecution in Zimbabwe and they are unable to escape that risk by internally relocating then they should normally be granted asylum because LGBT persons in Zimbabwe are members of a particular social group within the terms of the 1951 UN Refugee Convention.**

**Where a claim falls to be refused, it is unlikely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002.**

See asylum process guidance on [Non suspensive appeals certification under section 94 of the NIA Act 2002](#)

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## 2. Information

### 2.1. Legal rights

2.1.1 Male homosexuality remains illegal in Zimbabwe. President Robert Mugabe often refers disparagingly to gay people in his speeches, and attacked same-sex marriages at his inauguration speech in August. The rights of homosexuals are not openly discussed due to the stigma associated with homosexuality. LGBT people remain a marginalised and stigmatised group. The new constitution does not explicitly recognise LGBT rights.<sup>1</sup>

2.1.2 Section 73 of the Criminal Law (Codification and Reform) Act which became effective from July 2006 criminalises same sex male behaviour:

“73 Sodomy

- (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.”<sup>2</sup>

2.1.3 The US State Department covering 2013 stated:

“According to the country’s criminal code ‘any act involving physical contact between males that would be regarded by a reasonable person to be an indecent act’ carries a penalty of up to one year in prison or a fine up to \$5,000 [approx £3,000]. Despite that,

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<sup>1</sup> Foreign and Commonwealth Office <https://www.gov.uk/government/publications/zimbabwe-country-of-concern> Human Rights and Democracy Report 2013 - Section XI: Human Rights in Countries of Concern - Zimbabwe, 10 April 2014 <https://www.gov.uk/government/publications/zimbabwe-country-of-concern/zimbabwe-country-of-concern#access-to-justice-and-the-rule-of-law> [date accessed 8 August 2014]

<sup>2</sup> Zimbabwe: Act No. 23/2004 of 2005 on Criminal Law (Codification and Reform) [Zimbabwe], 3 June 2005, available at: <http://www.refworld.org/docid/4c45b64c2.html> [date accessed 8 August 2014]



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.<sup>3</sup>

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## 2.2. Treatment by, and attitudes of, state authorities

- 2.2.1 In March 2012 the UN Committee on the Elimination of Discrimination Against Women (CEDAW) expressed concern about acts of violence, perpetrated by state and non-state actors, against lesbian, bisexual and transgender women.<sup>4</sup>
- 2.2.2 Gays and Lesbians of Zimbabwe (GALZ) reported to CEDAW in January 2012 that “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 orientation; women have been denied custody, guardianship or access to their children on the basis of their sexual orientation”.<sup>5</sup> GALZ further notes that “The mere existence of laws criminalising homosexual acts impacts societal perceptions about ‘female’ sexuality and prevent women from living openly as LBT. 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”.<sup>6</sup>
- 2.2.3 In February 2012 the co-chairs of the Constitution Select Committee, representing all major parties, specifically opposed antidiscrimination clauses for gays and lesbians in the draft constitution. LGBT activists who sought sexual orientation as a protected class eventually settled for language offering a “right to privacy.”<sup>7</sup> In March 2013, the new

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<sup>3</sup> US Department of State <http://www.state.gov/j/drl/rls/hrrpt/index.htm>: Country Report on Human Rights Practices 2013 - Zimbabwe, Section 6. Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity. 27 February 2014.  
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220176> [date accessed 8 August 2014]

<sup>4</sup> UN Committee on the Elimination of Discrimination Against Women <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>, Concluding observations of the Committee on the Elimination of Discrimination against Women, Zimbabwe 01/03/2012 (para 23) <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-ZWE-CO-2-5.pdf> [date accessed 8 August 2014]

<sup>5</sup> Gays and Lesbians of Zimbabwe (GALZ) <http://www.galz.co.zw/>, Report on Discrimination against Women in Zimbabwe based on Sexual Orientation and Gender Identity Submitted to the Committee on the Elimination of Discrimination against Women, 6 January 2012 <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/559-1.pdf> [date accessed 8 August 2014]

<sup>6</sup> Gays and Lesbians of Zimbabwe (GALZ) <http://www.galz.co.zw/>, Report on Discrimination against Women in Zimbabwe based on Sexual Orientation and Gender Identity Submitted to the Committee on the Elimination of Discrimination against Women, 6 January 2012 <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/559-1.pdf> [date accessed 8 August 2014]

<sup>7</sup> US Department of State <http://www.state.gov/j/drl/rls/hrrpt/index.htm>, Country Report on Human Rights Practices 2012 - Zimbabwe, Section 6. Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity, 19 April 2013,  
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204183> [date accessed 8 August 2014]

constitution was approved which continues to outlaw homosexuality and ban same-sex marriage.<sup>8</sup>

2.2.4 The US State Department covering 2013 noted that the leadership in all political parties, including President Mugabe and former prime minister Tsvangirai, publicly criticized the LGBT community. In July [2013], Mugabe warned the LGBT community that he would come after them and that they would be 'beheaded.' Members of Gays and Lesbians of Zimbabwe (GALZ), the primary organization dedicated to advancing the rights of LGBT persons, experienced assault, harassment, and discrimination. The significantly increased harassment and scrutiny of GALZ by the government was attributed to political machinations surrounding the constitution-making process. Religious leaders in a society that was traditionally conservative and Christian espoused and encouraged discrimination against LGBT individuals."<sup>9</sup>

2.2.5 The Foreign and Commonwealth similarly report that in June 2013, the offices of Gays and Lesbians of Zimbabwe (GALZ) were forcefully entered by unknown assailants. Five suspects were subsequently arrested by police. Harassment of GALZ continued and, in August 2013, police seized property (computers, DVDs and pamphlets) from their offices on the basis they were promoting homosexuality.<sup>10</sup> In January 2014 the High Court ordered the Zimbabwean authorities to return property belonging to the Gays and Lesbians of Zimbabwe (GALZ).<sup>11</sup>

2.2.6 In contrast to GALZ, the Bulawayo-based Sexual Rights Center (SRC), an organization similarly dedicated to advancing the rights of 'sexual minorities,' faced minimal harassment. Prior to elections, however, a lesbian couple, who were SRC stakeholders, were harassed and intimidated by the CIO (Central Intelligence Organisation), which also threatened their families.<sup>12</sup>

2.2.7 The Foreign and Commonwealth Office (FCO) report that:

Homosexuality remains illegal in Zimbabwe. President Robert Mugabe often refers disparagingly to gay people in his speeches, and attacked same-sex marriages at his inauguration speech in August. The rights of homosexuals are not openly discussed due to the stigma associated with homosexuality. LGBT people remain a marginalised and

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<sup>8</sup> International Lesbian, Gay, Bisexual, Trans and Intersex Association <http://ilga.org/ilga/en/index.html>, Zimbabwe Approves New Anti-Gay Constitution, 22 March 2013, <http://ilga.org/ilga/en/article/o0ObQQZc1Kv> [date accessed 8 August 2014]

<sup>9</sup> US Department of State <http://www.state.gov/j/drl/rls/hrrpt/index.htm>: Country Report on Human Rights Practices 2013 - Zimbabwe, Section 6. Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity. 27 February 2014. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220176> [date accessed 8 August 2014]

<sup>10</sup> Foreign and Commonwealth Office <https://www.gov.uk/government/publications/zimbabwe-country-of-concern>: Human Rights and Democracy Report 2013 - Section XI: Human Rights in Countries of Concern - Zimbabwe, 10 April 2014 <https://www.gov.uk/government/publications/zimbabwe-country-of-concern/zimbabwe-country-of-concern#access-to-justice-and-the-rule-of-law> [date accessed 8 August 2014]

<sup>11</sup> The Zimbabwean <http://www.thezimbabwean.co/>, ZLHR encouraged by court's decision ordering return of confiscated GALZ property, 15 January 2014 <http://www.thezimbabwean.co/news/zimbabwe/70015/zlhr-encouraged-by-courts-decision.html> [date accessed 8 August 2014]

<sup>12</sup> US Department of State <http://www.state.gov/j/drl/rls/hrrpt/index.htm>: Country Report on Human Rights Practices 2013 - Zimbabwe, Section 6. Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity. 27 February 2014. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220176> [date accessed 8 August 2014]

stigmatised group. The new constitution does not explicitly recognise LGBT rights.<sup>13</sup> President Mugabe has repeatedly said that gay rights are not human rights. Mugabe publicly spoke in support of the Ugandan Anti-Homosexuality Act, signed by President Museveni in February, saying Museveni was “fighting a just fight”. In a statement, Mugabe said he was keen to know who is a member of GALZ (Gays and Lesbians of Zimbabwe), which has been advocating recognition of gay rights in Zimbabwe, and that he would “deal with the organisation”. As a result, on 12 March, a youth volunteer for GALZ was arrested and charged with illegally holding a public meeting. The police have indicated that they will proceed by way of summons. The volunteer was released without charge.<sup>14</sup>

- 2.2.8 Amnesty International’s 2013 Annual Report noted that “Politicization of the debate on outlawing discrimination on the basis of sexual orientation or gender identity fuelled harassment and intimidation of LGBTI people by police”.<sup>15</sup>
- 2.2.9 In their 2014 World Report, Human Rights Watch (HRW) noted that attacks against lesbian, gay, bisexual, and transgender (LGBT) individuals and rights activists continue to emanate from the highest level of government. During his election campaign in July 2013, President Mugabe (who has a long history of making homophobic statements) reiterated that LGBT citizens are ‘worse than dogs and pigs,’ and threatened to behead them. The new constitution does not explicitly recognize LGBT rights, and in his inauguration speech on 22 August 2013, Mugabe attacked same-sex marriage, which the new constitution prohibits, saying it was a ‘filthy, filthy, filthy disease.’ These attacks on LGBT people, arbitrary arrests of LGBT activists by the police, and the harassment by state agents of GALZ have driven many LGBT people underground.<sup>16</sup>
- 2.2.10 Nombulelo Madonko, a programmes officer at Sexual Rights Centre (SRC), reported in a February 2014 article that the centre has documented cases of harassment of sex workers, lesbians and gays by the police.<sup>17</sup> On 23 January 2014, GALZ stated that it “deplores the arrest, detention and trial of Ricky Nathanson, a transgender person in Bulawayo on the 16th of January for using a ladies toilet. We are concerned that Ricky may have been treated in an inhumane and undignified manner during the arrest and subsequent detention in police custody before her court appearance”.<sup>18</sup>
- 2.2.11 In March 2014, police entered a hotel in Harare where human rights defenders were attending a media training workshop by Gays and Lesbians of Zimbabwe (GALZ) and

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<sup>13</sup> Foreign and Commonwealth Office <https://www.gov.uk/government/publications/zimbabwe-country-of-concern: Human Rights and Democracy Report 2013 - Section XI: Human Rights in Countries of Concern - Zimbabwe, 10 April 2014> <https://www.gov.uk/government/publications/zimbabwe-country-of-concern/zimbabwe-country-of-concern#access-to-justice-and-the-rule-of-law> [date accessed 8 August 2014]

<sup>14</sup> Foreign and Commonwealth Office <https://www.gov.uk/government/publications/zimbabwe-country-of-concern: Zimbabwe - Country of Concern update 31 March 2014, 10 April 2014> <https://www.gov.uk/government/publications/zimbabwe-country-of-concern/zimbabwe-country-of-concern-latest-update-31-march-2014> [date accessed 8 August 2014]

<sup>15</sup> Amnesty International <http://www.amnesty.org/> Annual Report 2013 - Zimbabwe, 23 May 2013, <http://www.amnesty.org/en/region/zimbabwe/report-2013> [date accessed 8 August 2014]

<sup>16</sup> Human Rights Watch <http://www.hrw.org/> World Report 2014 - Zimbabwe, 21 January 2014 <http://www.hrw.org/world-report/2014/country-chapters/zimbabwe> [date accessed 8 August 2014]

<sup>17</sup> Inter Press Service <http://www.ipsnews.net/>, Surviving Zimbabwe’s Anti-Gay Laws, 11 February 2014 [http://www.ipsnews.net/2014/02/surviving-zimbabwes-anti-homosexuals-laws/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=surviving-zimbabwes-anti-homosexuals-laws](http://www.ipsnews.net/2014/02/surviving-zimbabwes-anti-homosexuals-laws/?utm_source=rss&utm_medium=rss&utm_campaign=surviving-zimbabwes-anti-homosexuals-laws) [date accessed 8 August 2014]

<sup>18</sup> GALZ <http://www.galz.co.zw/>, GALZ Statement on the Arrest of Transgender Activist, Ricky Nathanson, 23 January 2014 <https://iglhrc.org/content/galz-statement-arrest-transgender-activist-ricky-nathanson> [date accessed 8 August 2014]

arrested two GALZ members. They were questioned and charged under Section 25 (5) of Public Order Security Act (POSA) [regulations on public gatherings] before being released.<sup>19</sup> GALZ Chairperson, Martha Tholanah, had charges against her alleging that she was running an unregistered organization dismissed in February 2014.<sup>20</sup>

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## 2.3. Societal treatment and attitudes

2.3.1 Amnesty International's 2013 Annual Report noted that hostility directed at non-gender-conforming individuals and discrimination against LGBTI people has continued to be rife in the country. The media contributed to public prejudices against LGBTI individuals by publishing hostile comments about LGBTI people made by political leaders, particularly within the context of debate around the new Constitution. ZANU-PF and MDC-T accused each other of "harbouring" LGBTI people.<sup>21</sup>

2.3.2 The US State Department covering 2013 reported that LGBT individuals reported widespread societal discrimination based on sexual orientation. In response to social pressure, some families reportedly subjected their LGBT members to 'corrective' rape and forced marriages to encourage heterosexual conduct. Such crimes were rarely reported to police. Women in particular were subjected to rape by male family members. LGBT persons often left school at an early age due to discrimination and had higher rates of unemployment and homelessness. Many persons who identified themselves as LGBT did not seek medical care for sexually transmitted diseases or other health issues due to fear that health providers would shun them. Late in the year [2013], a mobile HIV/AIDS testing clinic visited the SRC's Bulawayo office. Afterwards LGBT stakeholders complained that the clinic's staff refused to provide joint counselling to couples and made discriminatory remarks about the patients, including that they were 'possessed by demons.'<sup>22</sup>

2.3.3 According to Chesterfield Samba, Director of GALZ, during the 2013 election, there were a dozen rallies at which the subject of gays was used to attack the Movement for Democratic Change (MDC) and vilify the gay community.<sup>23</sup> In August 2013, the Daily News reported that Mugabe was intensifying his anti-gay rhetoric as part of his election platform and self-identifying as homosexual was becoming increasingly dangerous. GT from Chitungwiza said: "In my hometown we have been subject of insults, being forced to go to meetings and chant anti-gay slogans. We are known to be a lesbian couple and the harassment and intimidation is too much." "We once reported a physical attack to the

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<sup>19</sup> 76 Crimes <http://76crimes.com/>, Zimbabwe police again raid LGBT rights meeting, 12 March 2014 <http://76crimes.com/2014/03/12/zimbabwe-police-again-raid-lgbt-rights-meeting/> [date accessed 8 August 2014]

<sup>20</sup> 76 Crimes <http://76crimes.com/>, Zimbabwe police again raid LGBT rights meeting, 12 March 2014 <http://76crimes.com/2014/03/12/zimbabwe-police-again-raid-lgbt-rights-meeting/> [date accessed 8 August 2014]

<sup>21</sup> Amnesty International <http://www.amnesty.org/> Annual Report 2013 - Zimbabwe, 23 May 2013, <http://www.amnesty.org/en/region/zimbabwe/report-2013> [date accessed 8 August 2014]

<sup>22</sup> US Department of State <http://www.state.gov/> <http://www.state.gov/drl/rls/hrrpt/index.htm>: Country Report on Human Rights Practices 2013 - Zimbabwe, Section 6. Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity. 27 February 2014. <http://www.state.gov/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220176> [date accessed 8 August 2014]

<sup>23</sup> Mail & Guardian (via IGLHRC) <https://iglhrc.org/>, Zanu-PF Win Holds Bleak Prospects for LGBTI Rights, 13 November 2013 <https://iglhrc.org/content/zanu-pf-win-holds-bleak-prospects-lgbti-rights> [date accessed 8 August 2014]

police, but the case was silenced. Now we can't even report the people harassing us as the police are also on their side. So we have resorted to keeping quiet.”<sup>24</sup> A February 2014 article reported that “it is risky, if not deadly, to be gay and lesbian in Zimbabwe – a country where such relations are beyond taboo”<sup>25</sup>

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<sup>24</sup> Daily News <http://www.dailynews.co.zw/>, Gays fear crackdown after Mugabe 'win', 5 August 2013 <http://www.dailynews.co.zw/articles/2013/08/05/gays-fear-crackdown-after-mugabe-win> [date accessed 8 August 2014]

<sup>25</sup> Inter Press Service <http://www.ipsnews.net/>, Surviving Zimbabwe's Anti-Gay Laws, 11 February 2014 [http://www.ipsnews.net/2014/02/surviving-zimbabwes-anti-homosexuals-laws/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=surviving-zimbabwes-anti-homosexuals-laws](http://www.ipsnews.net/2014/02/surviving-zimbabwes-anti-homosexuals-laws/?utm_source=rss&utm_medium=rss&utm_campaign=surviving-zimbabwes-anti-homosexuals-laws) [date accessed 8 August 2014]

# Caselaw

## EU:C:2013:720, [2013] WLR(D) 427, [2013] EUECJ C-199/12, ECLI:EU:C:2013:720 dated November 2013

In these joined cases, the Court of Justice of the European Communities ruled:

1. Article 10(1)(d) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group.
2. Article 9(1) of Directive 2004/83, read together with Article 9(2)(c) thereof, must be interpreted as meaning that the criminalisation of homosexual acts per se does not constitute an act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin which adopted such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution.
3. Article 10(1)(d) of Directive 2004/83, read together with Article 2(c) thereof, must be interpreted as meaning that only homosexual acts which are criminal in accordance with the national law of the Member States are excluded from its scope. When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation.

## LZ (homosexuals) Zimbabwe CG [2011] UKUT 487 (IAC) (26 January 2012)

In this country guidance case, the Upper Tribunal found:

- (i) There has been much public expression of extreme homophobia at the highest levels in recent years.
- (ii) Male homosexual behaviour is criminalised, but prosecutions are very rare. Lesbianism is not criminalised.
- (iii) Some homosexuals suffer discrimination, harassment and blackmail from the general public and the police. Attempted extortion, false complaints and unjustified detentions are not so prevalent as to pose a general risk. There are no records of any murders with a homophobic element. "Corrective rape" is rare, and does not represent a general risk.
- (iv) There is a "gay scene," within limitations.
- (v) Lesbians, living on their own or together, may face greater difficulties than gay men.
- (vi) GALZ (Gays and Lesbians of Zimbabwe) takes a realistic view: Zimbabwe is "not the worst

place in the world to be gay or lesbian even though the President, government officials and church leaders have whipped up a climate of hysterical homophobia.”

- (vii) Applying HJ & HT [2010] UKSC 31, [2010] Imm AR 729, there is no general risk to gays or lesbians. Personal circumstances place some gays and lesbians at risk. Although not decisive on its own, being openly gay may increase risk. A positive HIV/AIDS diagnosis may be a risk factor. Connections with the elite do not increase risk.
- (viii) The police and other state agents do not provide protection.
- (ix) A homosexual at risk in his or her community can move elsewhere, either in the same city or to another part of the country. He or she might choose to relocate to where there is greater tolerance, such as Bulawayo, but the choice of a new area is not restricted. The option is excluded only if personal circumstances present risk throughout the country.

### **Supreme Court. HJ & HT v SSHD [2010] UKSC31 7 July 2010**

The Supreme Court hereby established the test which should be applied when assessing a claim based on fear of persecution because of an applicant’s sexual orientation which is as follows:

- (i) Is the applicant gay or someone who would be treated as gay by potential persecutors in the country of origin?
- (ii) If yes, would gay people who live openly be liable to persecution in that country of origin?
- (iii) How would the applicant behave on return? If the applicant would live openly and be exposed to a real risk of persecution, he has a well-founded fear of persecution even if he could avoid the risk by living discreetly.
- (iv) If the applicant would live discreetly, why would he live discreetly? If the applicant would live discreetly because he wanted to do so, or because of social pressures (e.g. not wanting to distress his parents or embarrass his friends) then he is not a refugee. But if a material reason for living discreetly would be the fear of persecution that would follow if he lived openly, then he is a refugee [paragraph 35]

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# Change Record

Version	Date	Change References
1.0	14/10/2014	First version of updated country information and guidance.
2.0		

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