



## Zimbabwe - Researched and compiled by the Refugee Documentation Centre of Ireland on Wednesday 30 January 2019

### Information on the legal position of homosexuality

In May 2017 the *International Lesbian, Gay, Bisexual, Trans and Intersex Association* notes the applicable legislation for Zimbabwe as follows:

“Criminal Law (Codification and Reform) Act (Effective 8 July 2006).

Section 73. Sodomy [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.” ((International Lesbian, Gay, Bisexual, Trans and Intersex Association (May 2017) *State Sponsored Homophobia*, p.106).

A report issued in April 2018 by the *United States Department of State* reviewing events of the preceding year notes that:

“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” (United States Department of State (20 April 2018) *2017 Country Reports on Human Rights Practices: Zimbabwe*, p.32).

A report issued in March 2018 by *Avert* states that:

“Homosexual acts are illegal in Zimbabwe for men who have sex with men (sometimes referred to as MSM), but legal for women who have sex with women. As a consequence of this punitive law, national statistics are rarely available” (Avert (26 March 2018) *HIV and AIDS in Zimbabwe*, p.4).

*Erasing 76 Crimes* in April 2018 notes that:

“Under Zimbabwean law, same-sex intimacy between men, including “any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act,” is punishable by up to a year in prison” (*Erasing 76 Crimes* (20 April 2018) *2 Zimbabweans pee at a bar. Result: Arrest for gay sex*).

In July 2018 *Deutsche Welle* states that:

“Zimbabwean laws still criminalize what they define as ‘unnatural’ sexual relationships between individuals” (*Deutsche Welle* (17 July 2018) *Zimbabwe LGBTI community wants safe place to vote*, p.2).

*BBC News* in July 2018 states that in Zimbabwe:

“...homosexual acts and gay marriage are banned” (*BBC News* (23 July 2018) *Zimbabwe election: Five things*).

*GALZ/Gays and Lesbians of Zimbabwe* in July 2018 states that:

“The Zimbabwean constitution has outlawed marriage between individuals of the same sex, while common law to some degree makes it difficult for gay men or lesbians from expressing themselves in their preferred sexual orientation. Lesbian relationships are not criminalised, though socially they have remained unacceptable, and are often frowned upon. What is most common and well understood is the criminalisation of sexual relations between two men. Such an ‘offence’ may attract some jail time if fully convicted” (*GALZ/Gays and Lesbians of Zimbabwe* (26 July 2018) *Actus Reus: An analysis of human rights violations against LGBTI persons in Zimbabwe*, p.5).

*Reuters* in September 2018 points out that:

“Zimbabwe considers sex between men an “indecent act” punishable with a prison term...” (*Reuters* (28 September 2018) *Gay teacher says Zimbabwe not ready for debate on sexuality*).

A report issued in October 2018 by *Reuters* states that:

“Same-sex relations between men in Zimbabwe are illegal with specific laws criminalizing sodomy as well as any contact between two men that “any reasonable person would consider indecent” “ (*Reuters* (23 October 2018) *Trans people struggle for acceptance in Zimbabwe*).

A report released in January 2019 by *Human Rights Watch* commenting on events of 2018 notes that:

“Section 73 of the Criminal Law (Codification and Reform) Act, 2004 punishes consensual same-sex conduct between men with up to one year in prison or a fine or both. This restrictive legislation contributes to stigma and discrimination against lesbian, gay, bisexual, and transgender (LGBT) people” (*Human Rights Watch* (17 January 2019) *World Report 2019: Zimbabwe*, pp.2-3).

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This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre 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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