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I G L H R C

The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in ZAMBIA

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Introduction

Zambia is state party of the International Covenant on Civil and Political Rights (ICCPR) following its accession on April 10, 1984, and will present its third periodic report due on June 30, 1998 before the U.N. Human Rights Committee.

The Constitution of Zambia of 1991, as amended by Act no. 17 of 1996, establishes in its article 11 that “every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, color, creed, sex or marital status (...)”.

Furthermore, article 23(1) of the Constitution states that “no law shall make any provision that is discriminatory either of itself or in its effect”. The constitutional anti-discrimination clause is established by article 23(2) that reads “no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority” whereby discrimination is defined, according to article 23(3), any “different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions color or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description”.

Substantive Violations of the Convention

Articles 2(1), 26 (Non-discrimination) and 17 (Freedom from Arbitrary Interference with Privacy, Family, Home)

In 1994, in *Toonen v Australia*¹, the Human Rights Committee found that the criminalization of same-sex sexual conducts between consenting adults violated Articles 2(1), 17, and 26 of the Covenant. According to the Committee the notion of sex of Articles 2(1) and 26 must be interpreted as including sexual orientation. That decision constitutes an important term of reference for the Committee as well as for other treaty bodies and U.N. special procedures with reference to discrimination on grounds of sexual orientation in the light of the ICCPR.

The most egregious violation of LGBT rights in Zambia is constituted by the Zambian penal code that still criminalizes same-sex sexual conducts in private between consenting adults contravening to Articles 2(1), 17 and 26 of the ICCPR.

Section 155 of the Penal Code Act of 1995, Chapter 87 of the Laws of Zambia (as amended by Act no. 26 of 1933), establishes that “Any person who- (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of an animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of a felony and is liable to imprisonment for fourteen years”. Similarly to the Tasmanian statute outlawed by the Human Rights Committee in *Toonen*, section 155 punishes the crime of “unnatural offences”. Section 156 punishes with imprisonment for seven year the “attempt to commit unnatural offences”.

Section 157 of the Penal Code explicitly targets same-sex sexual conducts with the provision that criminalizes “indecent practices between males”. Section 157 reads “Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years”.

As indicated below, the criminal provisions above mentioned not only *per se* violate the ICCPR, but reinforce social stigma and homophobia against sexual and gender non normative behaviour, whether perceived or real, that may easily cause discrimination or more serious forms of human rights abuses, such as crimes motivated by hatred that attempt to life or physical integrity of individuals perceived as gay, lesbian, bisexual or transgender.

Practical Impact of these Violations

¹ *Toonen v. Australia*, Communication no. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

The retention of codes that criminalize sexual relationships between same-sex consenting adults has a devastating impact on same-sex practicing people in Zambia. Gays, lesbians, and bisexuals in Zambia live in constant fear of arbitrary detention, discrimination in education, employment, housing, and access to services, and extortion—all buttressed by the existence of sections 155 - 157 and lack of specific legal protections for LGBT under Zambian law.

Zambians who have fought against discrimination related to sexual orientation or gender identity have been systematically silenced. On 23 September 1998 in a statement to parliament, published in the Times of Zambia, Zambian Vice President Christon Tempo vowed that, "If anybody promotes gay rights after this statement, the law will take its course. We need to protect public morality. Human rights do not operate in a vacuum." It was a clear instruction for arrests by the police of anybody who identified or supported gays and lesbians. As a result an NGO calling itself Zambia Against People with Abnormal Sexual Acts [ZAPASA] was formed to fight against homosexuals.

When LGBT organizers appeared in the newspaper to announce their wishes to register the organization, government officials warned that any attempt to register the group or hold public meetings would be met with arrests. The then Home Affairs Minister Peter Machungwa ordered police to arrest anyone who attempted to register a group advocating for homosexual rights. Registrar of Societies Herbert Nyendwa, who is responsible for processing requests for legal recognition of civic groups, swore he personally would never register an LGBT group. LGBT activists were forced to go underground. Francis Chisambisa, one of the founding members of Lesbians Gays and Transgender Association (LEGATRA), was forced to flee Zambia in 1988, after local newspapers printed articles exposing his sexuality in a highly inflammatory manner. Chisambisa was eventually granted political asylum in South Africa where he has been living for the past nine years away from his family, friends and with limited financial support.

Extortion of gay men remains a major problem, and is often conducted with police participation. Gay men interviewed for this note all reported that blackmail of men believed to be gay was a regular occurrence and often led its victims to financial ruin, depression and ostracism from family and community. A recent report on a Zambian human rights website included an report by a police officer in which he described the targeting of gay men—both Zambian and foreigners—for police-instigated extortion attempts.

Equally disturbing, given Zambia's HIV seroprevalence rates which runs about 17% among adults, at present, there are no programs—government-sponsored or privately-funded—that respond to the HIV-related needs of same-sex practicing men in Zambia. Statistics gathered throughout Africa have shown that men who have sex with men are at increased risk for HIV transmission. The government of Zambia's National AIDS Control Program fails to even mention men who have sex with men.

Concluding Notes

Sections 155-157 of the Zambian Penal Code criminalize any form of consensual same-sex conduct in private between consenting adults providing for the possibility of imprisonment from seven to fourteen years. Such provisions reinforce social stigma against gay, lesbian, bisexual and transgender individuals and expose them to the risk of deprivation of liberty, life, physical integrity and health.

Sections 155-157 of the Zambian Penal Code are contrary to the equality principle and anti-discrimination clause of the Zambian Constitution and violate Articles 2(1), 17 and 26 of the ICCPR.

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