

Universal Periodic Review of Zimbabwe

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Joint submission by:

The Sexual Rights Centre

<http://www.sexualrightscentre.org>



GALZ

<http://www.galz.org>



COC Nederland

<http://www.coc.nl>



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Executive Summary (1-2 paragraphs, max.)

1. Summarize issues discussed in this report, identify main challenges

Progress and gaps in the implementation of recommendation from 1st cycle of UPR (2-3 paragraphs)

During Zimbabwe's first UPR in 2011, several stakeholder reports noted that the criminalization of consensual sexual intercourse and other physical sexual acts between males of a consenting age regarded as indecent by a reasonable person constituted a violation of lesbian, bisexual, and gay individuals' rights. France subsequently issued a recommendation that Zimbabwe decriminalize consensual same-sex relations between males of a consenting age, which Zimbabwe rejected.

Since Zimbabwe's last UPR, the human rights situation of LGBT individuals and sex workers have not improved significantly. Criminalization, in conjunction with state-sponsored hate speech, has meant that sex workers and LGBT individuals are highly stigmatized, discriminated against when accessing health care services, and at risk of arbitrary detention, police raids, torture, and state-sanctioned violence. In addition, the Constitution of Zimbabwe, which was gazetted as a law on the 22nd of May 2013 explicitly prohibits same sex marriages in terms of section 78 (3). Transgender individuals lack access to both basic and trans-specific healthcare services, are unable to have their gender identity legally recognized, and are subject to arbitrary arrests and detention, cruel, inhumane or degrading treatment, and torture. Trans women can be charged with sodomy despite their gender identity. This hostile political climate contributes to the stigmatization and isolation of LGBT individuals and sex workers within society, as family and community members exert physical, sexual, and verbal abuse towards these individuals. Further, these forms of marginalization are compounded for individuals whose gender, HIV status, race, age, and ability are also marginalized, as well as for individuals in rural settings.

We invite the Government of Zimbabwe to condemn human rights violations committed against persons because of their real or imputed sexual orientation, gender identity and expression, or real or imputed sex work status, and ensure adequate protection for LGBT persons and sex workers. Further, the Government of Zimbabwe should conduct swift, impartial and effective investigations into the unlawful use of profiling, intimidation, violence, torture, and verbal/emotional abuse against LGBT individuals and sex workers by law enforcement officials. We call on the government to implement measures to enable transgender individuals to have their gender identity legally recognized in government issued documents without infringement on other rights and adopt various measures to ensure access to comprehensive sexual and reproductive health and rights services, by giving priority to sex workers and LGBT persons. We condemn acts of pledging of females and other types of arranged or forced marriages through legislative reform and call on the state to repeal laws criminalizing soliciting and leaving off or facilitating "prostitution" and repeal the crime of sodomy to ensure that same-sex activity between consenting adults is not subject to criminal sanctions.

Background (2-3 paragraphs, max.)

2. Relevant background, as it relates specifically to the issues discussed in this report

Legal context: In July 2006, Zimbabwe’s legislature expanded the common law definition of “sodomy”, which is the performance of anal sexual intercourse between consenting male persons to include any consensual act involving physical contact other than anal sexual intercourse between males that would be regarded by a reasonable person to be an indecent act. The LGBT community in Zimbabwe is not explicitly protected in the Constitution. These challenges are compounded by the homophobic environment created by the country’s leadership and by state-sponsored media, both of which frequently degrade sexual minorities and sex workers and have, on several occasions, promoted violence against these groups. While the actual act of engaging in extra marital sexual intercourse or other sexual conduct for money or reward is not a crime, sex work is suppressed through laws that criminalize publicly soliciting for the purposes of “prostitution” and living off or facilitating “prostitution”.

Until the Constitutional Court of Zimbabwe ordered that the arrests of street based sex workers without just cause was unlawful on the 27th of May 2015, sex workers were subjected to egregious violation of their rights to personal liberty as a result of arbitrary arrests, more often accompanied by physical and sexual violence by police officers. Nonetheless, sex workers still suffer from multifarious and systematic violations of human rights and their dignity, including police abuse and violence, lack of access to justice, exposure to unsafe working conditions as a result of being driven to the periphery and lack of access to basic healthcare. There has been insignificant change in smaller towns in relation to arbitrary arrests of sex workers. Though the constitutional ruling is progressive, nothing has changed in the laws suppressing sex work since 1st July 2006, the police were only ordered to act within the current laws, and they can ignore the court order as per previous occurrences.

Transgender individuals are unable to change key identification documents to reflect their gender identity, which creates substantive, daily barriers in transgendered persons’ ability to travel, have bank accounts, seek employment, and otherwise live with dignity. Further, transgender individuals’ gender identity is not recognized in court proceedings or law enforcement, which can result in dehumanizing and unfair treatment under the law, leaving transgender women likely to be prosecuted under the “sodomy” law.

Policy context: Law enforcement officials, healthcare service providers, and other institutions are reluctant to work with sexual minorities and sex workers as a result of criminalization and prejudice. There is very limited training, sensitization or appreciation of the issues affecting sexual minorities and sex workers. Further, sex workers and sexual minorities have little access to recourse when they are subjected to violence, rape, torture, or other forms of mistreatment and abuse at the hands of service providers and law enforcement officials.

Social context: Societal stigma and discrimination, perpetuated by the political leadership, has resulted in the violations of many of the rights of the LGBT community and of sex workers. In addition to harassment, invasions of privacy, employment discrimination, and social isolation, sex workers and LGBTI individuals face disproportionately high risks of rape, sexual violence, and physical violence.

Problem identification

3. Analysis of priority sexual rights issues requiring further attention

As Zimbabwe enters its second UPR, this report seeks to deepen earlier analysis regarding how sexual minorities experience human rights violations, and to also illustrate how sex workers face distinct but overlapping kinds of human rights violations that must also be addressed. It is our understanding that several organizations may be putting forward written UPR submissions during this second UPR that acknowledge LGBT human rights, and we welcome this development as an example of the growing diversity and capacity of LGBT activists and organizations. We felt it best to submit a separate UPR submission in order to complement those of other organizations in several ways. First, our submissions seeks to illustrate how sex workers face a range of pressing and under-profiled human rights violations, many of which relate to those violations faced by the LGBT community. Second, our submission seeks to amplify the voices of transgender individuals as well as LBT women, who face disproportionate levels of violence and whose experiences are often under-profiled. Third, this report draws primarily on findings that speak to the experiences of LGBT individuals and sex workers in the Matabeleland regions, where the Sexual Rights Centre is based.

The findings from this report have been formulated based on the SRC's eight years of research and programming in legal advocacy, consultation with key stakeholders, and documentation of human rights violations. Additionally, these findings were corroborated and supplemented through focus group discussions with sex workers, gay/bisexual men, lesbian/bisexual women, and transgender individuals. Finally, staff members from the signatory organizations and collectives provided feedback and guidance based on their work in advancing sexual rights in Bulawayo and its environs.

a) Human rights violations related to law enforcement

During focus group discussions, sexual minorities and sex workers consistently highlighted how law enforcement officials violated their **rights to security of the person, bodily integrity, freedom from torture and cruel, inhumane and degrading treatment, and their right to privacy** as a result of **arbitrary detentions, violence, and police raids**. In the majority of cases, the grounds for arresting sexual minorities and sex workers are unlawful and arbitrary. For example, whereas the Criminal Law (Codification and Reform Act, 2006) only penalizes consensual sexual intercourse between male persons and other related conduct of a sexual nature, most sexual minorities reported being detained on grounds of gender expression or gender identity (e.g. the manner in which they, as lesbian, gay, bisexual, and/or trans individuals, chose to dress), which is in no way criminally sanctioned.

Sex workers experience verbal, physical and sexual abuse at the hands of law enforcement officials. Many sex workers have been detained and forced to engage in sexual activities with officers to ensure their release. Police officers offer protection for free sex. The numbers of incidences of police raping sex workers is very high, although cases are never reported for fear of repercussions. The experiences shared by sex workers range from being picked up by police and dumped far out of town at night, being raped by plain clothes officers at their place of work, being arrested and raped by multiple officers, being detained in cells with police dogs and other places that expose them to all forms of weather within police stations e.g. cages and being tortured and treated inhumanely. Police officers repeatedly do not act on criminal reports by sex workers against fellow police officers and clients, denying them access to justice.

LGBTI individuals, and in particular, transgender women and men, highlighted how arbitrary detention and torture at the hands of law enforcement officials were frequent and harmful. In one case, a transgender woman, who had been arbitrarily detained for three days for having used a female bathroom, was stripped in front of four police officers, verbally mocked and degraded, and paraded around for the amusement of the police officers on duty. A number of LGBTI individuals have reported cases of police abuse, including being doused in cold water, verbally abused, and threatened with arms.

“At the police station, they tortured me a bit because one of them knocked on my head with a gun. Although the torture wasn’t physical but the fact that they kept showing me weapons and threatening me, that was emotional torture and it affected me mentally.”

Lesbian/bisexual focus group participant

“During the two nights and three days that I was detained, I was paraded for each police officer to have a look and ridicule. The verbal, mental, cruelty, and indignity was just as intense as if I had been physically violated and abused. I think that if I were to have resisted I would have been beaten up.”

Transgender focus group participant

“For the police, masculinity becomes something they want to correct out of you. For me, after I was beaten up and detained, I had hemorrhages in both of my eyes and was driven to a secluded police house, where this person was clearly trying to make advances. The lucky thing is that a friend had made a report from another police station, so these people got a call that I was being looked for; that’s when the threat dissolved...but this person clearly wanted to prove a point.”

Transgender focus group participant

LGBTI individuals also reported a number of **violations of the right to privacy** at the hands of law enforcement officials, as the quotations below illustrate:

“Two years ago, the police entered our home without permission, they searched our house without permission, they seized our phones without permission ... they took my sisters who were visiting and had committed no crime and they spent the day locked up.”

Lesbian/bisexual focus group participant

“I feel once a person is known to be associated with whichever organization then the right to privacy is gone automatically because they can access your phone any time, they can hack your phone, they monitor your messages, they can hack your email, your Facebook. This has happened to many people in our community and there isn’t really much you can do about it, they just feel they have that power button to our lives in terms of security and privacy on social media.”

Lesbian/bisexual focus group participant

Additionally, both LGBTI individuals and sex workers reported incidents in which their right to privacy was violated by law enforcement officers who disclosed their identities in public with the intention to ridicule and demean these individuals.

Sex workers and LGBTI individuals also reported a number of incidents in which law enforcement officials violated their **right to remedies and redress** on the basis of an individual’s profession, sexual orientation,

and/or gender identity. Criminalization and stigmatization has meant that sexual minorities and sex workers are not only at much higher risk of experiencing violence within society; the perpetrators of violence and crimes against these individuals act with impunity. Therefore, sex workers and sexual minorities are reluctant to report cases, abuses and violations with the police and are unlikely to be taken seriously if they do. Lack of redress is particularly pressing for sex workers and for LGBTI women who are at extremely high risk of sexual violence at the hands of clients, family members, intimate partners, and others.

"If someone does something bad to me and I go to the police you find that they wouldn't even deal with my case. As long as someone goes and says this person is a lesbian my case will never be taken into consideration. So I think the right to be protected by the law... we need protection from the law."

Lesbian/bisexual focus group participant

"I was not able to take legal recourse for injustices against me for corrective rape and ill treatment at a health-care institution where I had been admitted for one month ... I was scared of being targeted...And now it affects me because every day when I'm sleeping at home I'm thinking of those people who got admitted today and how many people are going through that."

Lesbian/bisexual focus group participant

"if you go to the police station, even if it's for something totally unrelated to sex work, once they know that you are a sex worker they don't take you seriously ... They say they don't want to attend to sex workers cases because sex workers are problematic, they say we are liars and claim to have been robbed when we have not been robbed. Or if you go to report that you have been raped, they ask how a sex worker can be raped because that is what we go out looking for when we stand on the streets at night. Like if you go to report that a client stole from you, they will take up the case but not with the same kind of urgency as they would if a client goes to report having been robbed by a sex worker. If you are accused of robbing the client, you will get arrested there and then but if the client robs from you, they don't get arrested."

Sex worker focus group participant

"Sex workers' cases should be treated the same way that client's cases are treated. If the client reports that they were robbed, the sex worker is tracked down and arrested or the police harass all sex workers on the street but if a sex worker reports a case of being robbed by a client, she is not taken seriously and the case dies a silent death. For example, there is the case of the sex worker who was murdered by the client in her house a few months ago and now the case is silent and I doubt anything is being done"

Sex worker focus group participant

"When cases are reported to the police, they should be taken seriously because usually the person pays a bribe and is let off and that puts us at risk because the client can come back for revenge for getting him arrested."

Sex worker focus group participant

b) Human rights violations related to healthcare access

In addition to issues of violence, which increases sex workers and LGBT individuals' vulnerability to HIV, there are numerous barriers that prevent sex workers and sexual minorities from accessing healthcare services. Many sex workers report problems in seeking health services from government hospitals because the medical personnel refuse to treat sex workers unless they bring their partner for treatment. The refusal of treatment to sex workers on the basis of mandatory STI partner notification is a violation of the rights of sex workers. Contrary to the Ministry of Health and Child Welfare, AIDS and TB Unit Management of Sexually Transmitted Infections and Reproductive Tract Infections in Zimbabwe guidelines, partner notification is not mandatory. LGBTI individuals have reported being threatened, ridiculed, and driven out of health institutions upon disclosing that they have engaged in same-sex relations. This stigmatization prevents sex workers and LGBTI individuals from full disclosure about their specific health needs.

In addition to constituting a violation of these groups' human rights, the lack of access to healthcare services presents a substantive public health problem in light of these individuals' disproportionate risk of exposure to HIV/AIDS. LBTI women are not perceived to be at increased risk of contracting HIV or other STIs through same-sex sexual relations, however they are prone to exposure as a result of sexual violence and corrective rape.

“When you tell the nurse that you are not feeling well, they begin to ask a lot of questions about where you work and once you disclose to them that you are a sex worker, they no longer take you seriously or treat you as they treat other patients. They look down on you.”

Sex worker focus group participant

“When you go to the clinic with an STI and they suspect that you are a sex worker, they make you a laughing stock. They nurses call each other to show one another your STI and there is no privacy there.”

Sex worker focus group participant

“With sexual reproductive health and rights ... there's no comprehensive information and services at local health care centers, especially for the LBTI community, and it goes as far as the Zimbabwe National AIDS Strategic Plan. They only say MSM are a key population. Healthcare places and service providers are not really trained extensively, there's still homophobia.”

Lesbian/bisexual focus group participant

Transgender individuals are disproportionately affected by inadequate access to healthcare services. There is a lack of access to gender affirming services including access to hormones, medical equipment such as binders, and to medical procedures such as surgery. Many transgender individuals resort to seeking these procedures or services through informal and unsafe means, putting them at high risk of medical complications.

“Access feels non-existent, because I think we've been pushed to a point where, especially for a lot of young trans men and women, everybody just dreams of leaving and finding a place where they can have access to those service. Medical officials have no knowledge of trans issues. It seems too far from reality. A lot of people are then also tempted to start a lot of procedures underground – you just go across the border and try to get hormones just without any medical sort of assistance as to how you're supposed to go through whatever process it also puts people at risk health-wise.”

Transgender focus group participant

“For trans-women, we have no access to estrogen so a lot of the trans women here are on the female contraceptive pill; but it’s not controlled, monitored, or administered by a qualified physician. The effects on their organs are not known; whether HIV+ trans-women should combine this with ARVs is unclear. Access to medical services is one of our major issues. I went on hormones only because I travel and I was fortunate in that respect. But it’s very expensive, and it’s not covered by medical aid.”

Transgender focus group participant

LGBT individuals and sex workers’ access to psychosocial support services are limited by the country’s inadequate mental health services, and by the stigma and risk associated with being a sex worker or being LGBTI. For example, survivors of corrective rape are unlikely to access adequate treatment or support, since healthcare providers may side with the rapists and/or may condemn, report, and/or humiliate the individual for being suspected of being a lesbian or bisexual. Transgender individuals are also disproportionately at risk of mental illness in light of body dysphoria, widespread societal disapproval and ignorance, and the disproportionate rates of violence and humiliation that transgender individuals face on the part of law enforcement officials and mainstream society.

c) Human rights violations linked to lack of legal documentation for trans individuals

For Zimbabwe’s transgender population, a lack of legal recognition and inability to change gender markers on government documentation significantly impedes individuals’ **right to participate** in policy decisions and public life, **right to privacy**, and **right to personal autonomy and recognition before the law**. An inability to change government identification to reflect one’s gender identity means that transgendered individuals face discrimination, ridicule, and/or a denial of services in contexts in which their government-issued identification is required. Consequently, many transgender individuals encounter difficulty in traveling, seeking employment, or owning a bank account.

Moreover, this lack of legal documentation further compounds transgender individuals’ **right to health care, right to accountability and redress, and right to education and information** by putting transgender persons at risk of ridicule, harassment, arbitrary detention, and/or violence during their interactions with legal, health, and law enforcement institutions.

d) Criminalization, state-sponsored hate speech, and societal persecution

Criminalization of consensual sexual intercourse and related conduct between male persons and state-sponsored hate speech targeting LGBT individuals (and sex workers) contributes to the high levels of societal isolation, persecution, and discrimination of sexual minorities. Political leaders and state-sponsored media regularly incite hatred towards gays and lesbians by depicting same-sex relations as immoral and by suggesting that “gay gangsters” are seeking to undermine Zimbabwe’s economic and political welfare. In doing so, the state diverts attention from more pressing political issues while also fomenting hatred against already stigmatized and marginalized groups.

Criminalization of sex work through laws that prohibit publicly soliciting for the purposes of “prostitution” and living off or facilitating “prostitution” i.e. criminalizing brothel owners, lead to complex human rights

violations of sex workers which impair their dignity. These laws expose sex workers to arbitrary arrests and detentions, breach of the right to personal security, exposure to dangerous working conditions and lack of access to basic healthcare and justice.

The state-sponsored stigmatization and persecution of sex workers and sexual minorities contributes to a social atmosphere in which these groups experience high levels of stigmatization, with implications related to mental health, housing, employment, and general well-being:

“If your landlord finds out that you are a sex worker, they tell anybody and everybody who is willing to listen and in the end you have a difficult time living in that area. At times you are even forced to move away.”

Sex worker focus group participant

“Sometimes, if you are just walking in town and meet up with a police officer who knows you, you hear them whisper to their friends that they are with that you are a sex worker and they begin to discuss you so that everyone around them can hear what they are saying.”

Sex worker focus group participant

“I’ve seen that mostly the media puts us in danger, they out us more than anyone ... The media lies”
Lesbian/bisexual focus group participant

“Let’s say you wanted to work at a certain place but maybe because of the way you dress they start questioning you, even because of the way you carry yourself then it becomes a cause of suspicion. You find you do not have the equal rights of opportunities.”

Lesbian/bisexual focus group participant

As was briefly discussed in Section A (regarding law enforcement), sex workers and sexual minorities face high levels of social isolation, exclusion, and violence. LBT women are particularly at risk of sexual violence in the form of “corrective” or “curative” rape, in which family members rape a woman who is thought to be a lesbian based on the erroneous belief that doing so can “cure” her sexuality. Sexual minorities are also at great risk of forced marriages, including child marriages. While forcing a female person to marry is a crime and additionally, such forced marriages are of no effect in Zimbabwe, child marriages continue to be legal and prevalent. Because of the stigma and discrimination, sexual minorities are at a very high risk of forced marriages. While forced marriages are criminalized, it has an insignificant effect in offering a comprehensive protection towards sexual minorities, exacerbated by the fairly new Constitution that explicitly prohibits same sex marriages. Transgender individuals are also at a very high risk of physical and sexual violence.

Combined, the social exclusion and institutional discrimination that certain minorities face can have a compounding effect on these individuals’ social and psychological well-being. Sex workers and sexual minorities are at a disproportionate risk of suicide, drug abuse, and alcoholism in light of the varied levels

of exclusion and marginalization that they face. Sex workers and many LGBTI individuals have also demonstrated incredible resilience and agency in supporting one another, building up their communities, and believing in the ability of Zimbabwe to become a more inclusive and diverse place.

Recommendations for action:

We invite the government of Zimbabwe to:

1. Condemn human rights violations committed against persons because of their real or imputed sexual orientation, gender identity and expression, or real or imputed sex work status, and ensure adequate protection for LGBT persons and sex workers.
2. Conduct swift, impartial and effective investigations into the unlawful use of profiling, intimidation, violence, torture, and verbal/emotional abuse against LGBT individuals and sex workers by law enforcement officials.
3. Adopt and adapt the necessary measures to eradicate the tendency and/or diffusion, through the media and by politicians, of stereotypes that may promote discrimination against persons, based on their real or imputed sexual orientation, gender identity, or real or imputed sex work status.
4. Implement measures to enable transgender individuals to have their gender identity legally recognized in government issued documents without infringement on other rights.
5. Adopt various measures to ensure access to comprehensive sexual and reproductive health and rights services, by giving priority to sex workers and LGBT persons.
6. Condemn acts of pledging of females and other types of arranged or forced marriages through legislative reform.
7. Repeal laws criminalizing soliciting and leaving off or facilitating “prostitution” i.e. repeal sections 81 and 82 of the Criminal Law (Codification and Reform) Act, 2006 [Chapter 9:23].
8. Repeal the crime of sodomy as fully described under section 73 of the Criminal Law (Codification and Reform) Act, 2006 [Chapter 9:23] to ensure that same-sex activity between consenting adults is not subject to criminal sanctions.
9. Sensitize law enforcement agents and health care workers on the rights of LGBT persons and sex workers to ensure the provision of friendly and hassle- free services.