

Special Rapporteur on extrajudicial, summary or arbitrary executions:

Call for input: Killing of LGBTIQ+ persons

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ABBREVIATIONS

AIDS: Acquired Immunodeficiency Syndrome

CSO: Civil-society Organisation

HIV: Human Immunodeficiency Virus

ICO: International Communities Organisation

LGBTIQ+: Lesbian, Gay, Bisexual, Transgender, Queer, Questioning and Intersex

R(n): Respondent

STI: Sexually-Transmitted Infections

INTRODUCTION

International Communities organisation (ICO) is a global, neutral and independent international organisation working for the protection and empowerment of minority rights in conflict affected settings. ICO is committed to promoting global peace and reconciliation, with a specific focus on global conflicts rooted in the mistreatment, exclusion, and marginalisation of minority groups.

1. Methodology

1.1. International Communities Organisation's report illuminates insights from key CSO, NGOs, and legal/ constitutional experts in Zimbabwe. Through a range of qualitative and quantitative surveys and desk-based secondary research, ICO presents the results of our investigation into the unlawful killings of LGBTIQ+ persons in Zimbabwe. ICO would like to extend special thanks to Rabson Maperezano; Fungasi Sithole; and Makomborero Carl Muropa for their collaboration and insights for this submission.

1.2. All respondents were given comprehensive information about how and for what purpose their survey responses would be utilised. On this basis, respondents provided consent for their names to be featured in this submission, and where consent was not granted, their responses are included in an anonymised format.

2. Zimbabwean Legal Framework

2.1. 'The [Zimbabwean] Government has actively perpetuated discrimination against the LGBTIQ+ community through its laws, policies, and public statements. This includes The Criminal Law (Codification and Reform) Act of 2004 criminalises same-sex sexual activity and imposes penalties of up to 10 years in prison.' (R1) Further, 'the Government has publicly stated that homosexuality is "un-African" and has refused to recognize the rights of LGBTIQ+ people.' (R1, Chigudu 2021) 'The Constitution mentions when two consenting males enter sexual relations 'willingly and knowingly' they are liable to level 14 (high) fines or imprisonment.' (R3)

2.2. 'S78(3) of the Zimbabwe constitution which prohibits same sex marriages. This already criminalises same sex marriages but can be interpreted as also criminalising same sex relationships in general following the new broad definition of Marriage in the Marriages Act.' (R2) 'Section 73 Criminal Law Act

2006, which criminalises acts of ‘sodomy’. This provision carries a maximum penalty of one year imprisonment and a fine. Only men are criminalised under this law.’ (Human Dignity Trust 2024) ‘the common law inherited from the British during the colonial period, under which ‘sodomy’ was criminalised.’ (Human Dignity Trust 2024)

2.3. ‘S81 of the Constitution which defines a child as every boy and girl under the age of 18, thereby deliberately not recognizing other sexes. Our law denies the LGBTIQ+ communities basic recognition as equal human beings. This goes against S56(3) which prohibits unfair discrimination on the grounds of sex and gender among other grounds’ (R2) ‘but does not mention homosexuality.’ (R3)

2.4. ‘The limited definition of rape in terms of S65 of the Criminal Law (Codification and Reform) Act which defines rape as when a male person knowingly has sexual intercourse or and anal sexual intercourse with a female person without their consent. Rape is thus an exclusive act perpetrated by men to women only. The various LGBTIQ+ communities are thus not protected against rape hence when they encounter such experiences, they suffer in silence. This is further exacerbated by the generally deterring attitudes of service providers in the criminal justice system and in the health care sector as well. The deaths could arise from failure to access adequate health care leading to them dying of HIV/AIDS related complications...they will prefer to die in silence than approach our facilities.’ (R2)

3. Quantitative Findings

3.1. ICO’s research drew attention to a number of key findings which illuminated the background to the climate of LGBTIQ+ rights in Zimbabwe, which correspondingly facilitate an environment where killings of this community occur.

3.2. 50% of respondents strongly agreed, and 50% answered neutrally that the lives of LGBTIQ+ community in Zimbabwe are at threat due to their sexual orientation or gender identity.

3.3. 50% of respondents strongly disagreed and 50% answered neutrally that human rights (including the right to life) of the LGBTIQ+ community in Zimbabwe are protected and respected.

3.4. 50% of respondents strongly agreed and 50% agreed that the state must make legal and policy reforms in order to protect the rights (including the right to life) of the LGBTIQ+ community in Zimbabwe.

3.5. 100% of respondents disagreed that protection of human rights (including the right to life) for the LGBTIQ+ community in Zimbabwe has improved during 2020 - 2024.

3.6. 100% of respondents answered naturally that CSOs and NGOs working to support the LGBTIQ+ community in Zimbabwe are able to effectively protect the human rights (including the right to life) of the communities they serve.

4. The threat of the right to life for the LGBTIQ+ community in Zimbabwe due to their sexual orientation or gender identity

4.1. Threats to the right of life of the LGBTIQ+ community in Zimbabwe are facilitated by the restrictive legal environment in which homosexuality is criminalised (R1), as such ‘LGBTIQ+ individuals can face legal penalties, social stigma, and violence’ (R1) which persists due to ‘widespread ignorance and

misinformation about LGBTIQ+ issues in Zimbabwe, which can lead to violence and harassment.’ (R1) Indeed, also ‘the US Department of state report found that there were no known cases of prosecutions of consensual same-sex sexual conduct. This has been the consistent finding of these reports in recent years.’ (Human Dignity Trust 2024) ‘police are often empowered towards brutality towards the LGBTIQ+ community.’ (R3)

4.2. Further, in Zimbabwe ‘transgender people are not legally recognized, and many face difficulties accessing healthcare and other services’ (R1, Universal Periodic Review of Zimbabwe 2016) which along with other communities within the LGBTIQ+ group, leads to death from inability to enjoy free and unrestricted access to public services. ‘LGBTIQ+ persons have reported being threatened, ridiculed, and driven out of health institutions upon disclosing that they have engaged in same-sex relations. This stigmatisation prevented [them] from fully disclosing their specific health needs.’ (Zimbabwe November 2016 Universal Periodic Review) This results in both 1) death from infection, and 2) increased risk of transmission of infectious, and sometimes deadly disease, within the community (Hunt. et. al, 2017). Indeed, ‘gender identities are often not the actual reason for deaths or killing, but it can be the case that it is the secondary reason: such as examples where police or health care officials do not get involved with stigmatised anal STIs or people who people who have been anally raped may feel they do not want to report crimes or go to hospital because of the stigma behind diseases linked to homosexuality.’ (R3)

4.3. Respondents noted that the existence of an ‘extremely strong cultural context of homophobia in Zimbabwe’ which is ‘not openly admitted, instead it is suppressed and kept out of sight out of mind – gaps are left executively, but the gaps in legislation and constitution are extremely obvious and they clearly do not support LGBTIQ+.’ (R3) Government and ‘official rhetoric on homosexuality is strongly homophobic’ (DFAT 2016) which is also mirrored in public discourse (Mkhize & Mambondiani, 2023).

4.4. Respondents additionally noted issues of death by neglect of LGBTIQ+ persons ‘parents sometimes disown their LGBT children and this often leads to suicide or lack of access to communities - this is often linked to identify crisis and gender or sexuality identity crisis.’ (R3) Killings of LGBTIQ+ persons from suicide are exacerbated by practices of violence against individuals with homosexual orientation to force compulsory heterosexuality (Saugy, 2022) and have been shown to have a higher chance of being at risk of poor mental health (Mkhize & Mambondiani, 2023).

4.5. Further, ‘LGBTIQ+ persons often left school at an early age due to discrimination. Higher education institutions reportedly threatened to expel students based on their sexual orientation. Members of the LGBTIQ+ community also had higher rates of unemployment and homelessness.’ (USSD 2017) Indeed, LGBTIQ+ student communities have been refused university scholarships (Manyukwe, 2024). Lack of qualifications, records of expulsion, unemployment and homelessness undermine LGBTIQ+ persons right to life, and contribute to indirect killings of this community.

5. Examples where the human rights (including the right to life) of the LGBTIQ+ community in Zimbabwe have been undermined during the past five years

5.1. Examples where the human rights (including the right to life) of the LGBTIQ+ community in Zimbabwe have been undermined during 2020-2024 are numerous. ‘There have been consistent reports of discrimination and violence being committed against LGBTIQ+ people in recent years, including assault, sexual violence, harassment, blackmail, and the denial of basic rights and services.’ (Human Dignity Trust 2024) Cases are nearly always not reported due to stigma and fear of persecution, thus making verification of data impossible. ‘Statistics for killings are hard to come by as police often do not have proper reports of actual killings of LGBTIQ+ communities as this information is inaccessible. This community also works

discreetly in an underground way so deaths are often covered up or misreported.’ (R3) Lack of accurate documentation prevents an understanding of the extent of unlawful killings of the LGBTIQ+ community in Zimbabwe, and correspondingly constructive engagement to address these issues.

5.2. The UN Committee on the Rights of the Child noted in its report ‘the Committee...reiterates its concern about high levels of discrimination against [...] lesbian, gay, bisexual, transgender and intersex children and children affected or infected by HIV/AIDS.’ (UN Committee on the Rights of the Child 2016) ‘Authorities continued to violate rights of LGBTIQ+ people. A Zimbabwe Human Rights Commission report...showed continued hostility and systematic discrimination by police and politicians against LGBTIQ+ people, driving many underground.’ (HRW 2016) ‘The authorities more commonly harass LGBTIQ+ persons using loitering, indecency and public order statutes, although violations are under-reported because of the stigma attached to the LGBTI community.’ (DFAT 2016)

5.2. ‘In 2020, a gay man was beaten to death by a mob in Harare after his sexual orientation was revealed.’ (R1)

5.3. ‘In 2021, a transgender woman was attacked by a group of men in Bulawayo and later died of her injuries.’ (R1)

5.4. ‘In 2022, a lesbian couple was attacked by a group of men in their home in Mutare, and their possessions were destroyed.’ (R1)

5.5. In 2019, Ricky Nathanson (transgender woman) was arrested for public nuisance - but due to her gender identity she was humiliated, degraded, beaten, kept in horrendous conditions and much more. The Zimbabwe High Court actually ruled in her favour, and determined the arrest to be unlawful, meaning she was entitled to damages. (R3) This case was at ‘the High Court at Bulawayo. [Nathanson] sued police for unlawful arrest, detention, malicious prosecution and emotional distress pursuant to her arrest in January 2014 by six riot police officers on charges of “criminal nuisance” for wearing female clothes and using a female toilet [she] was eventually awarded \$400,000 in damages.’ (Human Dignity Trust 2024)

6. The role of CSOs and NGOs working to support the human rights of the LGBTIQ+ community (including the right to life) in Zimbabwe

6.1. Civil society organisations (CSOs) and non-governmental organisations (NGOs) working to support the LGBTIQ+ community in Zimbabwe use several strategies to protect the human rights of their constituents:

6.2. (1) ‘Advocacy and awareness-raising: public education about LGBTIQ+ issues and awareness raising of the discrimination and violence that LGBTIQ+ people face. (2) Community support: provision of support, counselling, and other services to LGBTIQ+ people who are facing discrimination or violence. (3) Legal assistance: provision of legal assistance to LGBTIQ+ people who are facing criminal charges or discrimination.’ (R1)

6.3. CSOs also conduct ‘capacity building and strengthening programmes’ (R4) which seek to build the resilience of the LGBTIQ+ community against threats to their general wellbeing and life, their role also extends to ‘lobbying the government’ (R4) - examples of this include Gays and Lesbians of Zimbabwe (GALZ) advocacy work to the ZANU-PF party in July 2018 (HRW World Report: Zimbabwe 2019)

6.3. Examples of CSO support for the right to life of the LGBTIQ+ community in the issue-area of healthcare include ‘organisations such as Citizens Health Watch conduct surveillance and monitoring of

quality of services for the LGBTIQ+ with a view towards strengthening the quality of health service provision for this key population. As such, the attitudes of health workers towards this population is improving' (R2) which is helping to address deaths by gross negligence.

7. Recommended interventions to the State of Zimbabwe to prevent killings of LGBTIQ+ persons

7.1. 'The decriminalisation of homosexuality...[and] recognition of LGBTIQ+ rights in accordance with international human rights standards' (R1, R4)

7.2. 'The creation and enforcement of anti-discrimination laws that protect LGBTIQ+ people from violence, harassment, and discrimination in all areas of life, including employment, housing, healthcare, and education' (R1) the legal grounds of which, should be in respect of the 'equality clause in the Constitution.' (R4)

7.3. The training of 'law enforcement agencies to respond effectively to incidents of violence and discrimination against LGBTIQ+ people.' (R1)

7.4. Ensure 'access to quality health care, including mental health services for LGBTIQ+ persons and ensure that they are not subjected to discriminatory treatment.' (R1)

7.5. Provision of comprehensive and inclusive sex education in educational institutions which 'includes LGBTIQ+ issues, and education for young people on the importance of tolerance and respect for diversity.' (R1)

7.6. The de-politicisation of the LGBTIQ+ issue, wherein 'political actors would not want to be seen to be acknowledging the existence of this community. Doing so could lead to loss of votes in election times as a large proportion of Zimbabweans is still homophobic.' (R2)

7.7. Support and continuation with the positive developments in the government response to protecting the rights to life of LGBTIQ+ persons, namely 'the Ministry of Health and Child Care towards providing non discriminatory and inclusive health care. The LGBTIQ+ populations can freely access their health services though a lot still needs to be done to provide quality care for the sector. There has [also] been acknowledgment of intersex populations especially at birth registration which is remarkable progress from the binary one.' (R2)

8. Recommended interventions to the international community, including the United Nations and its associated bodies of the State of Zimbabwe to prevent killings of LGBTIQ+ persons

8.1. To maintain international pressure on Zimbabwe to uphold its 'positive obligation to take prompt measures to prevent, investigate, hold accountable, and otherwise remedy those instances, including in order to guarantee non-repetition of such unlawful killings.' (OHCHR 2024)

8.2. The provision of 'financial and technical assistance to local organisations' that protect the right to life of LGBTIQ+ people in Zimbabwe. (R1)

8.3. To 'support the establishment of an independent national human rights institution in Zimbabwe that may investigate human rights violations and hold perpetrators accountable.' (R1)

CONCLUSION

9.1. ICO notes that numerous laws, institutions, policies and practices in Zimbabwe constitute direct breaches of international human rights obligations in relation to the right to life of LGBTIQ+ persons. This report has outlined these legal and policy breaches; the positive changes which have resulted in the reduction of unlawful deaths of LGBTIQ+ persons in Zimbabwe; recommendations which may result in the reduction of unlawful deaths of LGBTIQ+ persons and instances and examples of failures to respect and protect the right to life of LGBTIQ+ persons during 2020-2024.

9.2. ICO would like to draw particular attention to killings of LGBTQ+ persons through gross negligence, enabled by a climate of suppression and how such 'indirect' deaths - both in Zimbabwe and other similar contexts - should be perceived as equally deserving of the Special Rapporteur's intervention.

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ANNEXES

- ***Annex One: survey***

<https://docs.google.com/document/d/1GS04Rk9PYGvfFUgHDq-YOgvn-BhLiD7HLVuqILPJGyl/edit?usp=sharing>