


Criminalisation of Homosexuality

Updated 25 October 2015

 Zambia		
<p>National Law: <i>Penal Code Act¹ Amended by Penal Code (Amendment) Act No. 15 of 2005</i></p> <ul style="list-style-type: none"> - S155: Unnatural Offences² - S156: Attempt to Commit Unnatural Offences³ - S158: Indecent Practices between persons of the same sex⁴ 	<p>Maximum Penalties:</p> <ul style="list-style-type: none"> - Between 15 years' and Life imprisonment - Between 7 and 14 years' imprisonment - Between 7 and 14 years' imprisonment 	<p><u>Treaty Ratification</u></p> <p>AFRICAN CHARTER</p> <p>CAT</p> <p>CEDAW</p> <p>CRC</p> <p>ICCPR</p> <p>ICCPR OP</p> <p>ICESCR</p>
<p>In respect to the former two crimes, the law is applicable only to men. In respect of the latter, the law is equally applicable to both men and women.</p>		
<p>Enforcement</p>	<ul style="list-style-type: none"> - The law is actively enforced in Zambia. - May 2015: The High Court of Zambia upheld the judgment of a lower court acquitting LGBT and HIV/AIDS activist Paul Kasonkomona on charges of "<i>soliciting for immoral purposes.</i>" Kasonkomona was arrested in April 2013 after speaking on Zambian television about the need to recognise the rights of vulnerable groups, such as LGBT people, to address the HIV pandemic.⁵ - 2014: The US Human Rights Country Report reported that in 2014 there were arrests, but no prosecutions under Zambia's laws criminalising same-sex activities. The report also noted that "<i>the government [of Zambia] used laws against 'soliciting for immoral purposes' to arrest and charge some LGBT activists.</i>"⁶ - 3 July 2014: The Kapiri Mposhi Magistrate Court acquitted two Kapiri Mposhi men suspected of engaging in same-sex relations, noting the prosecution had failed to prove its case against them. The men spent 14 months in remand prison before their acquittal.⁷ - 8 August 2013: Harrison Jere was arrested for allegedly engaging in consensual sodomy with Jackson Musonda after supposedly being caught in the act by the homeowner who was sleeping in the same room.⁸ - 5 May 2013: James Mwape and Philip Mubiana (both 21 years old) were arrested by police in response to reports from neighbours that the two were engaging in 	

	<p>homosexual acts. Both men were subjected to non-consensual anal examinations by forensic doctors as part of the police investigation. Mubiana’s sister allegedly reported her brother to the police. After spending one year in jail both men were eventually acquitted in July 2014.⁹</p>
<p>Statements by Public Figures</p>	<ul style="list-style-type: none"> - December 2014: President Edgar Lungu, then a Presidential aspirant who was elected to the role in January 2015, stated: <i>‘We will not support homosexuality. I will not compromise human nature because of money.’</i>¹⁰ - June 2014: Zambia’s foreign affairs minister Gabriel Namulambe stated that <i>‘Zambia is a Christian nation and as such we live by the Christian values and we will not be able to recognize gay rights.’</i>¹¹ - November 2013: First Lady of Zambia Doctor Christine Kaseba-Sata called for an end to LGBT discrimination at a UNAIDS event in Lusaka. <i>‘Silence around issues of men who have sex with men should be stopped and no one should be discriminated against on the basis of their sexual orientation.’</i>¹² - April 2013: Police spokeswoman, Elizabeth Kanjela, told the media that homosexuality was a serious offence and appealed to the public to report anyone involved to the police.¹³ - April 2013: Justice Minister Wynter Kabimba urged the Zambian public to report homosexuals.¹⁴ He also called on Zambians to reject unanimously people and institutions championing homosexuality. He declared Zambia a <i>‘Christian nation ... there is no way we can allow this un-Zambian culture.’</i> He urged all citizens to report to law enforcement agencies anyone trying to ‘import’ and sponsor homosexual practices in Zambia.¹⁵ - 7 April 2013: Tribal chiefs in Zambia called for a crackdown on gays in the Southern African nation after four gay couples sought to have their marriages recognized by a state registrar - calling for them to ‘be caged.’ Chief Madzimawe of the Ngoni and Chief Shakumbila of Mumbwa wrote to the Zambia Daily Mail to condemn LGBT people after it reported that four mixed national same-sex couples had sought to have their marriages recognized by a state registrar earlier this month. <i>‘It is not a culture of Zambians, Africans and Ngonis to practice homosexuality and gay people should be caged’</i> Chief Madzimawe told the newspaper.¹⁶ - 10 April 2013: On a live radio panel discussion among religious leaders a religious leader suggested that the most appropriate way to deal with gay people was death. Minister of Youth and Sports, Chishimba Kambwili, called in during the programme and said defenders of LGBTI rights were <i>‘agents of the devil’</i>. His statements suggested that the Zambian government will be <i>‘introducing stiffer penalties against homosexuality’</i>, instead of repealing the existing laws.¹⁷

	<ul style="list-style-type: none"> - May 2013: Home Affairs Minister Edgar Lungu reacted to a Human Rights Watch report on the high-handed manner in which gay suspects have been treated by asserting that there would be no room for negotiation. Lungu said: <i>'There will be no discussion on gay rights. That issue is foreign to this country.'</i>¹⁸ - July 2012: The Zambian Human Rights Commission, in its response to a draft Constitution issued in April, argued against the universal application of some rights. It submitted that an open-ended anti-discrimination clause could be interpreted as including LGBTI rights.¹⁹ - 23 September 1998: In a statement to Parliament, Vice-President Christon Tembo threatened that: <i>'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.'</i>²⁰
<p style="text-align: center;">Persecution and Discrimination</p>	<ul style="list-style-type: none"> - Extremely high levels of persecution and discrimination have been reported, as well as high levels of hostility from all public officials and church leaders in Zambia. There has been a heavy crackdown on LGBTI people from April 2013 (after false reports of four gay couples attempting to register their marriages over Easter), resulting in a highly volatile situation for LGBTI people. - 2014: The US Department of State Human Rights Country Report on Zambia for 2014 found that <i>'according to LGBT advocacy groups, societal violence occurred, as did societal discrimination in employment, housing, and access to education or health care... LGBT groups reported frequent attacks and discrimination in the neighborhoods in which they operated. Activists reported regular harassment, including threats via text message and e-mail, vandalism, stalking, and outright violence.'</i>²¹ - 22 October 2014: Police arrested two transgender individuals in Lusaka's Kabwata area, claiming they 'looked gay'. Police told those who attempted to obtain their release that police would use the 24-hour detention period to <i>'teach them a lesson'</i> and released them with no charges only after extracting a bribe.²² - 19 May 2014: Residents of the Marapodi area of Lusaka apprehended two women suspected of being lesbians, took them to a nearby police station, and demanded police arrest them. After the mob dispersed, police released the two without charge.²³ - 2 May 2014: Two women were reportedly attacked by a mob of neighbors who accused them of lesbianism and living together as a same-sex couple. The neighbors were quoted as threatening <i>'to lynch anyone linked to lesbianism activities.'</i>²⁴ - February 2014: Between January and February, the state-owned newspaper Times

of Zambia published a series of seven editorials based on pseudoscience that decried homosexuality.²⁵

- **3 January 2014:** A self-identifying gay man was reportedly attacked by a mob of people which allegedly included three police officers.²⁶
- **September 2013:** Zambian LGBT activist organization Friends of Rainka recorded 43 rights violations against LGBT people in the six months to September 2013. The report concluded that the *'continued violence that they [LGBT people] face from state and non-state actors is often unreported in the news, thereby creating a false delusion of tranquility in the Southern African Nation.'*²⁷
- Two gay men aged 19 and 21 were 'found in a compromising position' outside a nightclub. They were beaten, yet refused to press charges out of fear of being charged themselves.²⁸
- **2010:** The US Department of State's 2010 Human Rights Report on Zambia found that *'the government enforced the law that criminalizes homosexual conduct and did not respond to societal discrimination'* and *'societal violence against homosexual persons occurred, as did societal discrimination in employment, housing, and access to education or health care.'*²⁹
- Government officials resisted attempts by LGBTI groups to register their group or hold public meetings:
- **6 April 2013:** Paul Kasonkomona was arrested on leaving a TV station after appearing on a television programme to discuss LGBTI and HIV issues and advocate for gay rights to be respected at all costs like any other form of human right. Kasonkomona was charged with the vague offence of *'soliciting in a public place for immoral purpose'*. He was acquitted in February 2014.³⁰
- **July 2007:** Home Affairs Minister, Peter Machungwa, ordered the police to arrest anyone attempting 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, reportedly swore he would never register an LGBTI group.³¹
- LGBTI activist organisation, Friends of Rainka, and its members were subject to repeated targeting:
 - o The Lease of an advocacy officer was revoked by his landlord after speaking in an online paper on the rights of LGBTI people; and
 - o Outreach officers were arrested and detained on suspicion of being gay. They were released next day without charge.³²

Legislative
News

- **July 2015:** Zambia's Justice Minister announced a roadmap for the passage of the country's updated Constitution, stating that the government will take all provisions to Parliament in September 2015, other than the new Bill of Rights and Article 79, which require a referendum.³³ The referendum on the new Bill of Rights is scheduled to take place in 2016, concurrently with the next general election. Following this announcement the Government published the *Constitution of Zambia (Amendment) Bill 2015*³⁴ containing all provisions in the proposed new Constitution except the Bill of Rights. The most recent version of the new Bill of Rights released publicly is in the October 2014 draft of the Constitution³⁵. This draft included a number of changes and additions compared to the current 1996 Constitution that are relevant to the protection of LGBT rights:
 - o 'Human dignity, equity, social justice, equality and non-discrimination' listed as one of Zambia's "national values and principles" (at Article 8(d) of draft). "Morality and ethics" are listed as another national value;
 - o A clause precluding the interpretation of the Constitution to provide 'rights and freedoms... that are repugnant to the morals and values of the people of Zambia' (at Article 24(2)(c));
 - o Protection from discrimination remains in place, with the definition of discrimination expanded at Article 312 to include 'social or economic status'. 'Sex' remains a protected status under this clause;
 - o Right to privacy now includes the right not to 'have information relating to that person's family, health status or private affairs unlawfully required or revealed' (at Article 32(d));
 - o Marriage explicitly limited to people 'of the opposite sex' (at Article 60(2)).
- **2012 (UPR):** Zambia accepted a recommendation to '*ensure thorough and impartial investigation into all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity.*' However, Zambia failed to accept a recommendations to repeal the law criminalizing same-sex sexual relations among consenting adults,³⁶ having rejected a similar recommendation during the first review cycle in 2008.³⁷
- During the 2012 review, the Zambian delegation stated that: '*the Constitution making process will give the people the opportunity to determine whether specific rights for LGBT persons should be enshrined in the Constitution. The Government was determined not to prescribe to the Zambian people those rights that the Constitution should contain, but to let them make such a determination.*'³⁸
- Zambia abstained on the 2011 Human Rights Council Resolution (calling for the UN High Commissioner for Human Rights to prepare a report on the human rights of

LGBT people). The country was one of three abstentions.

¹ A consolidated version of the law is : <http://www.zambialii.org/zm/legislation/consolidated-act/87>

² *Penal Code Act, s.155: '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; commits a felony and liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life.'*

³ *Penal Code Act, s.156: 'Any person who attempts to commit any of the offences specified in section one hundred and fifty-five commits a felony and is liable, upon conviction of not less than seven years but not exceeding fourteen years.'*

⁴ *Penal Code Act, s.158: '(1) Any male who, whether in public or private, commits any act of gross indecency with a male child or person, or procures a male child or 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 child or person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.'*

⁵ Southern African Litigation Centre, *News Release: Zambia High Court confirms acquittal of HIV activist Paul Kosonkmona* (15 May 2015) <<http://www.southernafricalitigationcentre.org/2015/05/15/news-release-zambia-high-court-confirms-acquittal-of-hiv-activist-paul-kosonkomona/>> accessed on 25 September 2015

⁶ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Zambia* (US Department of State June 2015)

⁷ *Ibid*

⁸ Colin Stewart, *Report: Two more arrests in Zambia for gay sex* (Erasing 76 Crimes 10 August 2013) <<http://76crimes.com/2013/08/10/report-two-more-arrests-in-zambia-for-gay-sex/>> accessed on 19 July 2014

⁹ Colin Stewart, *Zambia frees 2 allegedly gay men after year in prison* (Erasing 76 Crimes 3 July 2014) <<http://76crimes.com/2014/07/03/zambia-frees-2-allegedly-gay-men-after-year-in-prison/>> accessed on 19 July 2014

¹⁰ Lusaka Times, *Edgar Lungu says he can't abandon Sata's vision and will not support Gay rights* (13 December 2014) <<http://www.lusakatimes.com/2014/12/13/edgar-lungu-says-cant-abandon-satas-vision-will-support-gay-rights/>> accessed on 12 August 2015

¹¹ Michelle Garcia, *Zambian Minister Confirms Government Won't Recognize Gay Citizens' Rights* (The Advocate 9 June 2014), <<http://www.advocate.com/world/2014/06/09/zambian-minister-confirms-government-wont-recognize-gay-citizens-rights>> accessed on 12 August 2015

¹² Richard Lee, *Miracles do Happen* (OSISA, 6 November 2013) <<http://www.osisa.org/lgbti/blog/miracles-do-happen-zambia>> accessed on 12 August 2015

¹³ Human Rights Watch, *Zambia: Stop Prosecuting People for Homosexuality* (20 May 2014) <<http://www.hrw.org/news/2013/05/20/zambia-stop-prosecuting-people-homosexuality>> accessed on 19 July 2014

¹⁴ Colin Stewart, *10 months in Zambian prison on gay charges; no bail* (Erasing 76 Crimes 4 March 2014) <<http://76crimes.com/2014/03/04/10-months-in-zambian-prison-on-gay-charges-no-bail/>> accessed on 19 July 2014

¹⁵ Lusaka Times, *Kabimba urge Zambians reject and denounce people and institutions championing homosexuality* (22 April 2013) <<http://www.lusakatimes.com/2013/04/22/kabimba-urge-zambians-reject-and-denounce-people-and-institutions-championing-homosexuality/>> accessed on 19 July 2014

¹⁶ Andrew Potts, *Zambia chiefs call for 'caging' of gays after couples try to marry* (Gay Star News 7 April 2013) <<http://www.gaystarnews.com/article/zambia-chiefs-call-%E2%80%98caging%E2%80%99-gays-after-couples-try-marry070413/>> accessed on 10 September 2015

¹⁷ Human Rights Watch, *Zambia: Stop Prosecuting People for Homosexuality* (20 May 2014) <<http://www.hrw.org/news/2013/05/20/zambia-stop-prosecuting-people-homosexuality>> accessed on 19 July 2014

¹⁸ Nse Udoh, *Zambia: Go to Hell, Edgar Lungu Tells Gay Rights Activists* (All Africa 21 May 2013) <<http://allafrica.com/stories/201305210403.html>> accessed on 19 July 2014

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- ¹⁹ Human Rights Commission (Zambia), *The First Draft Constitution: The Human Rights Commission's Submission to The Technical Committee On Drafting The Zambian Constitution July 2012* (July 2012) <http://www.hrc.org.zm/media/hrc_submission_to_technical_committee_on_drafting_zambian_constitution.pdf> accessed on 19 July 2014 at 5
- ²⁰ Human Rights Watch, *More Than a Name: State-Sponsored Homophobia and its Consequences in Southern Africa* (14 March 2003), at page 39 <<http://www.hrw.org/reports/2003/safrica/safrighrc0303.pdf>> accessed 19 July 2014
- ²¹ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Zambia* (US Department of State June 2015) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>> accessed on 25 September 2015
- ²² Ibid
- ²³ Ibid
- ²⁴ Colin Stewart, *Attacked by Zambian mob, 2 lesbians must leave home* (Erasing 76 Crimes 19 May 2014) <<http://76crimes.com/2014/05/19/attacked-by-zambian-mob-2-lesbians-must-leave-home/>> accessed on 12 August 2015
- ²⁵ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014: Zambia* (US Department of State June 2015) <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>> accessed on 25 September 2015
- ²⁶ Colin Stewart, *Zambia's growing intolerance to LGBTI persons* (Erasing 76 Crimes 31 January 2014) <<http://76crimes.com/2014/01/31/zambias-growing-intolerance-towards-lgbti-persons/>> accessed on 12 August 2014
- ²⁷ Colin Stewart, *43 anti-LGBT violations in Zambia; 'accident waiting to happen'* (Erasing 76 Crimes 30 September 2013) <<http://76crimes.com/2013/09/30/43-anti-lgbt-violations-in-zambia-accident-waiting-to-happen/>> accessed on 12 August 2015
- ²⁸ Ibid
- ²⁹ Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013: Zambia* (US Department of State 2013) <<http://www.state.gov/j/drl/rls/hrrpt/2010/af/154376.htm>> accessed on 19 July 2014
- ³⁰ BBC News, *Zambia gay rights activist Paul Kasonkomona acquitted* (25 February 2014) <<http://www.bbc.co.uk/news/world-africa-26342543>> accessed on 19 July 2014
- ³¹ Global Rights & IGLHRC, *The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in ZAMBIA: Submission to the Human Rights Committee* (OHCHR July 2007) <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBTShadow_Zambia.pdf> accessed on 19 July 2014
- ³² Colin Stewart, *43 anti-LGBT violations in Zambia; 'accident waiting to happen'* (Erasing 76 Crimes 30 September 2013) <<http://76crimes.com/2013/09/30/43-anti-lgbt-violations-in-zambia-accident-waiting-to-happen/>> accessed on 10 September 2015
- ³³ Abel Mboosi, *Government to table draft constitution bill in next sitting of Parliament* (The Post Zambia 31 July 2015) <<http://www.postzambia.com/news.php?id=10158>> accessed on 12 August 2015
- ³⁴ : <http://www.parliament.gov.zm/node/4403>
- ³⁵ : http://www.elections.org.zm/media/constitution_of_zambia_technical_committee_-_23rd_october_2014.pdf
- ³⁶ UNHRC, *Report of the Working Group on the Universal Periodic Review* (31 December 2012) UN Doc A/HRC/22/13, at para. 103
- ³⁷ UNHRC, *Report of the Working Group on the Universal Periodic Review: Zambia* (2 June 2008) UN Doc A/HRC/8/43, at para. 60
- ³⁸ UNHRC, *Report of the Working Group on the Universal Periodic Review* (31 December 2012) UN Doc A/HRC/22/13, at para. 65