

# Transgender Rights in Zambia

## Rights under the Constitution of Zambia

**Article 11** sets out the fundamental rights and freedoms of every person in Zambia whatever his or her “sex”. There is no reference to gender identity or sexual orientation. The reference to “sex” should be interpreted to include protection from discrimination based on gender identity, which is a prohibited ground in international law.

**Article 8 of the Constitution of Zambia (Amendment) Act 2 of 2016** lists “morality and ethics” as a national value and principle – which also includes human dignity, equity, social justice, equality and non-discrimination. Article 266 of the amended Constitution defines “discrimination” to include sex, birth, health and social or economic status.

| Fundamental Human Right                              | Where is it in the Constitution? |
|--|----------------------------------|
| Fundamental rights and freedoms                      | Article 11                       |
| Right to life  | Article 12                       |
| Personal liberty                                     | Article 13                       |
| Freedom from torture, inhuman or degrading treatment | Article 15                       |
| Protection of privacy                                | Article 17                       |
| Rights of accused persons                            | Article 18                       |
| Freedom of expression                                | Article 20                       |
| Protection from discrimination                       | Article 23                       |
| Right to association and assembly                    | Article 21                       |

## Changing your Gender Marker

There is no law in Zambia that specifically allows transgender people to change the sex description in their birth documents.

Section 9(2) of the **National Registration Act 19 of 1964** could possibly be used to change a person’s sex description. It states that:

*“In any case where a national registration card issued to a registered person ceases in any material particular to accurately represent his identity, such person shall, without undue delay, produce his national registration card and give such particulars as shall be necessary for the issue of a new national registration card to a registrar who, on payment of any fee and subject to any conditions which may be prescribed, shall issue to such person a new national registration card.”*

## Your Rights in the Workplace

The **Employment Act 57 of 1965** does not provide protection for unfair and unlawful discrimination by the employer against an employee. However, the **Employment Amendment Act 15 of 2015** added a **section 36(3)**, which states that:

*“A contract of service shall not be terminated unless there is a valid reason for the termination connected with the capacity, conduct of the employee or based on the operational requirements of the undertaking.”*

**Section 36(4)** states that it is not a valid reason to terminate a contract on a number of grounds, which include a person’s sex. The reference to “sex” should be interpreted to include protection from discrimination based on gender identity – which is a prohibited ground in international law.

## Criminalisation and Harassment

Zambia has harsh laws which criminalise same-sex sexual acts for both men and women. These laws are unlawfully used to persecute transgender people. The **Penal Code Act of 1931, as amended in 2005**, has the following provisions:

- **Section 155** criminalises sodomy (“carnal knowledge against the order of nature”). It is punishable with imprisonment of not less than 15 years – and up to life imprisonment.
- **Section 156** provides that attempting to engage in sodomy is also a crime, which is punishable by 7-14 years in prison.
- **Section 158(1)** criminalises “gross indecency” by a male and criminalises consensual sexual acts between men in private. It carries a jail term of 7-14 years.
- **Section 158(2)** does the same with regard to women and it carries the same jail term.

Transgender persons are also harassed under vagrancy provisions in the **Penal Code**:

- **Section 178(e)** refers to “every person who, without lawful excuse, publicly does any indecent act.”
- **Section 178(f)** refers to a person who “publicly conducts himself in a manner likely to cause a breach of the peace”.
- **Section 178(g)** refers to a person who “in any public place solicits for immoral purposes”. All these persons are deemed to be idle and disorderly persons, and are liable to imprisonment for one month or to a fine not exceeding 60 penalty units or to both.
- **Section 181(d)** sets out the offence of being “a rogue and vagabond”. The first offence carries a jail term of three months. Every subsequent offence means imprisonment for one year.

Transgender people who work as sex workers are often arrested on charges of rogue and vagabond and ‘loitering’ – even though sex work itself is not criminalised.

**Article 193(2)(e)** of the **Constitution**, as amended, specifically imposes an obligation on the Police Service to uphold the Bill of Rights in the enforcement of their duties.

The **Anti-Gender-based Violence Act 1 of 2011** applies in cases where the victim of violence is in

a domestic relationship with the perpetrator. A domestic relationship includes a relationship where the victim is in an actual or perceived sexual relationship, of any duration, with the perpetrator. A domestic relationship also relates to instances where family members, parents or a spouse are the perpetrators of violence. A domestic relationship is also present where the victim and perpetrator share the same residence or are co-tenants, and where the victim is a house-help in the household of the perpetrator.

Gender-based violence refers to any physical, mental, social or economic abuse against a person because of that person's gender. Acts which fall within this definition include physical abuse; sexual abuse; emotional, verbal or psychological abuse; economic abuse; intimidation; harassment; stalking; controlling behaviour; malicious damage to property; depriving a person of access to property; trafficking; and conduct that in any way endangers the safety, health or wellbeing of the person, undermines the person's privacy, integrity or security, or detracts from the person's dignity.<sup>28</sup> A single act may amount to gender-based violence.<sup>29</sup>

If a person has been a victim of gender-based violence from any type of domestic relationship, the Act places specific duties on police officers to assist him or her – including by responding promptly to any request for assistance, and offering protection.<sup>30</sup>

The **Gender Equity and Equality Act 22 of 2015** provides, in section 15(1), that a person, public body or private body shall not discriminate against any sex. Section 16(1) goes further to state that a person, public body and private body has a duty to uphold the rights of both sexes, and to respect and safeguard the dignity of both sexes. Section 16(2) provides that a person, public body or private body, shall not exploit or subject any person to abusive, violent or degrading treatment. Any person who violates these provisions is liable to criminal punishment.

**Section 39** of the Act criminalises the act of sexual harassment. Sexual harassment is defined in the Act, as including:

*“conduct or contact of a sexual nature, such as the following:*

- a) having physical contact, making advances, comments or innuendos without the consent of a person;*
- b) being offensive, humiliating or intimidating to a person in a suggestive manner; or*
- c) threatening or imposing a condition on a person for doing or undertaking anything or creating a hostile environment for an employee.”*

## Access to Sexual and Reproductive Health

The **Gender Equity and Equality Act 22 of 2015** specifically protects women's sexual and reproductive rights in section 21. **Section 32(3)** provides that a health officer shall respect the sexual and reproductive health rights and dignity of every person without discrimination.

<sup>28</sup> See definitions in section 3(1) of the Anti-Gender-Based Violence Act, Act 1 of 2011.

<sup>29</sup> Section 4 of Anti-Gender-Based Violence Act.

<sup>30</sup> Sections 5, 7 and 8 of Anti-Gender-Based Violence Act.