

Transgender Rights in Zimbabwe

Rights under the Constitution of Zimbabwe

Section 44 states that “the State and every person ... and every institution and agency of the government at every level must respect, promote, protect and fulfil the rights and freedoms set out in this Chapter.”

Section 56(3) prohibits unfair discrimination on a number of grounds, including sex and gender. These should be interpreted to include protection against discrimination based on gender identity – which is a prohibited ground in international law.

Fundamental Human Right	Where is it in the Constitution?
Rights and freedoms	Section 44
Right to life	Section 48
Personal liberty	Section 49
Rights of arrested and detained persons	Section 50
Right to human dignity	Section 51
Right to bodily and psychological integrity	Section 52
Freedom from torture or cruel, inhuman or degrading treatment	Section 53
Equality	Section 56(1)
Protection from discrimination	Section 56(3)
Right to privacy	Section 57
Freedom of expression	Section 61
Administrative justice	Section 68
Rights of accused persons	Section 70
Right to health care	Section 76
Marriage rights	Section 78(3)
Freedom of association	Section 58

Section 47 of the **Constitution** further provides that the Chapter on rights in the Constitution “does not preclude the existence of other rights and freedoms that may be recognised or conferred by law, to the extent that they are consistent with this Constitution.”

Changing your Gender Marker

Zimbabwe does not have a specific law that allows transgender people to change the gender marker on their birth documents, or other official documents. Transgender people should rely on their fundamental human rights that are guaranteed under the Constitution.

Section 18(2) of the Births and Deaths Registration Act 11 of 1986 allows a person to change their forename. **Section 18(3)** provides for the change of a surname, but the Registrar-General must be satisfied that it is for a “lawful purpose”. It appears unlikely that these provisions could be useful when trying to change a gender marker.

Your Rights in the Workplace

The **Labour Act 16 of 1985, as amended**, protects employees against discrimination:

- **Section 5(1)** states that no employer shall discriminate against any employee or prospective employee on a number of grounds - including gender and HIV/AIDS status. The listed grounds do not include sex or sexual orientation. “Gender” should be interpreted to include protection from discrimination based on gender identity – which is a prohibited ground in international law.
- **Section 5(3)** provides that any person who contravenes subsection (1) or (2) shall be guilty of an offence.
- **Section 5(4)** allows an employee to claim damages from the employer.
- **Section 12B(3)(a)** provides that an employee is unfairly dismissed, if the employer deliberately made continued employment intolerable for the employee.

Criminalisation and Harassment

Transgender people are also unlawfully targeted by the harsh provisions in the **Criminal Law (Codification and Reform) Act 23 of 2004**:

- **Section 61** defines sexual intercourse as being between a male and female. Sodomy is included in the definition of “**unlawful sexual conduct**”.
- **Section 73** criminalises sodomy.
- **Section 77** refers to “public indecency”.
- **Section 77(1)(a)** states that: “Any person who indecently exposes himself or herself or engages in any other indecent conduct which causes offence to any other person in or near a public place, or in or near a private place within the view of such other person shall be guilty of public indecency.”
- **Section 77(2)** states that “No person shall be convicted of public indecency unless the words or conduct in question are sufficiently serious to warrant punishment”. The court will consider various factors – including the nature of the conduct, the age and gender of the person who witnessed the conduct, and the degree of offence caused to the person who witnessed the conduct.

- **Section 78** makes it an offence to transmit a sexually transmitted disease and makes a person liable to a fine or imprisonment for a period not exceeding five years or both.

The **Domestic Violence Act 14 of 2006** interprets a complainant to include a person who co-habits with the respondent or who has been in an intimate relationship with the respondent, or who has lived with the respondent. The definition of domestic violence is wide and includes physical, sexual, emotional, verbal and economic abuse, intimidation, and also harassment. The Act makes an act of domestic violence an offence and entitles the complainant to a protection order. **Section 5** places specific duties on police officers to assist complainants.

Access to Sexual and Reproductive Health

Section 29(1) of the **Constitution** states that “the State must take all practical measures to ensure the provision of basic, accessible and adequate health services throughout Zimbabwe.” **Section 29(2)** provides that no person should be refused emergency medical treatment at any health institution.

There are no laws or policies that provide for hormonal treatment or any other gender-affirming healthcare for transgender people. Transgender people who want to access hormonal treatment usually look to the black market or travel outside Zimbabwe – mainly to South Africa – to access this medication.