



**Upper Tribunal  
(Immigration and Asylum Chamber)**

LZ (homosexuals) Zimbabwe CG [2011] UKUT 00487 (IAC)

**THE IMMIGRATION ACTS**

**Heard at North Shields  
on 13 and 14 October 2011**

**Determination Promulgated**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN  
DEPUTY UPPER TRIBUNAL JUDGE HOLMES**

**Between**

**LZ**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr R Selway, Solicitor

For the Respondent: Mr J Parkinson, Senior Home Office Presenting Officer

*(i) There has been much public expression of extreme homophobia at the highest levels in recent years.*

*(ii) Male homosexual behaviour is criminalised, but prosecutions are very rare. Lesbianism is not criminalised.*

*(iii) Some homosexuals suffer discrimination, harassment and blackmail from the general public and the police. Attempted extortion, false complaints and unjustified detentions are not so prevalent*

*as to pose a general risk. There are no records of any murders with a homophobic element. "Corrective rape" is rare, and does not represent a general risk.*

*(iv) There is a "gay scene," within limitations.*

*(v) Lesbians, living on their own or together, may face greater difficulties than gay men.*

*(vi) GALZ (Gays and Lesbians of Zimbabwe) takes a realistic view: Zimbabwe is "not the worst place in the world to be gay or lesbian even though the President, government officials and church leaders have whipped up a climate of hysterical homophobia."*

*(vii) Applying HJ & HT [2010] UKSC 31, [2010] Imm AR 729, there is no general risk to gays or lesbians. Personal circumstances place some gays and lesbians at risk. Although not decisive on its own, being openly gay may increase risk. A positive HIV/AIDS diagnosis may be a risk factor. Connections with the elite do not increase risk.*

*(viii) The police and other state agents do not provide protection.*

*(ix) A homosexual at risk in his or her community can move elsewhere, either in the same city or to another part of the country. He or she might choose to relocate to where there is greater tolerance, such as Bulawayo, but the choice of a new area is not restricted. The option is excluded only if personal circumstances present risk throughout the country.*

## **DETERMINATION AND REASONS**

### *Procedural history*

1. The appellant, a citizen of Zimbabwe, entered the United Kingdom lawfully about 13 years ago. She overstayed. She sought asylum in 2009, based on the risk of persecution as a lesbian. The respondent refused the claim, holding that even if the appellant did face ostracism from her family and social discrimination, that would not constitute persecution; that there is a homosexual scene in Zimbabwe, especially in urban areas, from which she could derive support; and that if necessary she could relocate within Harare, or elsewhere in Zimbabwe.
2. The appellant appealed to the Asylum & Immigration Tribunal. Immigration Judge Birkby dismissed the appeal by determination promulgated on 27 January 2010. She held that although attitudes towards lesbians in some quarters might be significantly disapproving, the appellant would not suffer ill-treatment or persecution as a result of her sexuality.
3. The appellant sought reconsideration, arguing that the Immigration Judge failed to apply the test of "reasonable discretion", explained in XY (Iran) v SSHD [2008] EWCA Civ 911 and MK (Lesbians) Albania CG [2009] UKAIT 00036.

4. Under transitional provisions, the application for reconsideration fell to be treated as an application for permission to appeal to the Upper Tribunal. On 18 February 2010, permission was granted.
5. The case came before the Upper Tribunal firstly on 8 September 2010. The appellant argued that the law had moved on, and the test of discretion, which the Immigration Judge overlooked, was not the correct criterion. The Immigration Judge's material error was failure to apply the test explained in HJ (Iran) & HT (Cameroon) v SSHD [2010] UKSC 31, [2010] Imm AR 729, in particular *per* Lord Hope at paragraph 35 and Lord Roger at paragraph 82. On the findings of fact made by the Immigration Judge, the appeal fell to be allowed.
6. The respondent argued that the background was one of societal disapproval but not persecution. The tests explained by the Supreme Court did not come into play, so there was no error of law material to the outcome.
7. Reasons for finding legal error in the AIT determination were issued, dated 19 April 2011. It was held, with no disrespect to the Immigration Judge, that she erred by failing to apply the approach explained in HJ & HT. The appellant's case had to be reheard. It was identified as a potential Country Guidance case on risk to homosexuals in Zimbabwe. After various further procedural hearings and directions, it came before us for such hearing on 13 and 14 October 2011. This is our joint determination, to which each of us has contributed.

#### *Expert and background evidence*

8. The appellant filed a report dated 8 July 2011 by Dr Oliver Phillips, Reader in law at the University of Westminster. He grew up in Zimbabwe in the 1970's, and has returned regularly since. He has been an adviser to and a member of the executive committee of GALZ (Gays and Lesbians of Zimbabwe). (The respondent did not suggest that his views are biased by his strong connections with that organisation, and we are satisfied that they are not.) He has published extensively on regional social, sexual and criminological issues. He is a well qualified and recognised expert. He was a witness at the hearing. His evidence has been of high value, although we have not accepted all of his conclusions.
9. The appellant also filed a report by Dr L B Aguilar, of the University of St Andrews, whose academic background is in anthropology and religion. She has researched and published on southeast Africa (centring apparently on Malawi). She mentions nine periods of research in the region, from 1998 to 2009. She states that she has prepared numerous expert reports for the courts, for countries including Zimbabwe. She did not give oral evidence.
10. The appellant further filed about 100 pages of newspaper reports and other information.

11. The respondent filed a bundle comprising some 34 shorter items; a UKBA report of a Fact Finding Mission, 9-12 August 2010; a Country of Origin Information Report (COIR), dated 19 August 2011; and transcripts of interviews carried out in Harare by the First Secretary of the British Embassy with representatives of three Zimbabwean organisations. The interviews were with GALZ on 1 and 3 August 2011, with WOZA (Women of Zimbabwe Arise) on 23 August 2011, and with ZLHR (Zimbabwe Lawyers for Human Rights) on 26 August 2011.
12. The materials, with references as provided by the parties, are more fully listed in Appendix A.
13. Neither party referred directly to the US State Department Country Report on Human Rights Practices, Zimbabwe, 2010, published 8 April 2011, although it is a source quoted in the background materials filed on both sides, and is in the respondent's bundle. It seems to be the main channel for the suggestion that there are any incidents of "corrective rape".
14. We have taken into account since the hearing a BBC News report of 24 October 2011, and representatives' written comments thereon, as explained below.
15. We have identified a further relevant statutory provision of Zimbabwean criminal law. We have not found it necessary to ask for further submissions in light of that section, both because it is not critical to our eventual findings, and because it speaks for itself.

### *Terminology*

16. In the *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity* (21 November 2008, web link at Appendix A; not cited by parties) the preferred terminology is "LGBT" so as to refer not to "homosexuals", but to "lesbians" in the case of women and "gays" in the case of men. The *Note* makes it clear that the use of "homosexuals" to include gay women is better avoided. However, in this determination we have had to reflect the language of the evidence and submissions. We have thus used "homosexuals" to refer to gay men, or to homosexuals of either gender, as the context requires.

### *Anonymisation*

17. Before us, the appellant did not rely only on general risk to homosexuals, or to female homosexuals. To a greater extent than before, partly in light of subsequent events in Zimbabwe, she relied on her unique circumstances. Parties agreed that it is not desirable for this determination to make her identity public. Under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, we have set out the particular reasons for the decision in her case in Appendix B. We have not included matters likely to identify her in the main body of this determination. Appendix B will therefore not appear in the reported determination, and its disclosure is prohibited.

18. To preserve anonymity, we have not applied Practice Statement 3.7 and have not incorporated in full the reasons for finding error of law in the AIT determination.

*Some common ground*

19. EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC), the current starting point for Zimbabwean asylum cases, is not concerned with risk to homosexuals. Neither party asked us to make any finding which might be inconsistent with the findings in *EM*.
20. The background materials and submissions disclose a large area of common ground, which we can therefore summarise briefly. There has been much public expression of extreme homophobia at the highest levels in recent years. President Mugabe is most vociferous. He has blamed the LGBT community for Africa's ills and repeatedly denounced its members as "worse than pigs and dogs." Prime Minister Tsvangirai (until recently) did not venture to dissent from such rhetoric. The President's main ally in such rhetoric is "Archbishop" Kunonga, who has used anti-homosexuality as a prominent theme in splitting the Anglican Communion (from which he has been excommunicated), largely to satisfy his own greed, with police backing.
21. An example of how the background evidence demonstrates a link among homophobia, political posturing and other motives is an excerpt from the Zimbabwean *Metro* newspaper of 22 September 2011, filed by the appellant:

**Gay love row bishop seizes orphanage:** A struck-off bishop close to President Mugabe has taken over an orphanage of 80 children in protest at gay marriages. Norbert Kunonga has also seized schools and priests' homes ...

22. There have been no gay marriages in Zimbabwe, either in the Anglican Church or elsewhere.
23. The law criminalises homosexual behaviour, at least among male homosexuals. Some homosexuals suffer discrimination, harassment and blackmail from some of the general public, and from the police.

*The extent of the dispute*

24. The dispute between the parties is over the seriousness and extent of actual ill-treatment. Mr Selway invited us to allow the appeal primarily because all homosexuals, male and female, are at risk of persecution throughout Zimbabwe. On matters contentious between the parties, he relied almost entirely on Dr Phillips' report. Alternatively, he asked us to find LZ at risk of persecution, throughout the country, in her own circumstances.

25. The respondent invited us to conclude that there is no general ill-treatment of homosexuals, male or female, to a level rising to a real risk of persecution. We were also asked to find that LZ is not at any personal risk, and there was therefore no need to consider relocation. On contentious matters, the respondent relied mainly on the COIR and on the interviews with GALZ, ZLHR and WOZA.
26. The submissions for the respondent reflected her current “Operational Guidance Note” (OGN), which is along the following lines. There is ingrained anti-homosexual prejudice and discrimination, often more severe against women because of their lower social status. On the other hand, there is growing tolerance among younger people and in urban areas. There may be problems over access to health facilities. There have been arrests of gay men and gay rights activists, but these are isolated cases. There have been reports of societal anti-gay violence. GALZ considers it much more difficult for lesbians to come out. Difficulties are not generally at the level of persecution or of ill-treatment to Article 3 standards.

*The criminal law*

27. It was not disputed before us, and we think it is legally uncontentious, that the existence of a law penalising consensual homosexual acts does not itself constitute persecution; but if such a law is routinely enforced, and penalties imposed, that is persecutory. We take that as another starting point.
28. The Criminal Law (Codification and Reform) Act came into effect in July 2006. It includes the following:

Section 73. Sodomy

(1) Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or any other act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act, shall be guilty of sodomy and liable to a fine up to or exceeding level 14 or imprisonment for a period not exceeding one year or both.

29. Thus, sodomy is defined so as to incorporate any consensual sexual act between men. GALZ state that most cases are dealt with by the police as non-consensual, although contrary to the facts. That creates an offence equivalent to aggravated indecent assault, attracting the same penalty as rape, a maximum of life imprisonment, although generally of between 7 and 10 years.
30. Dr Phillips records the prior common law history of “unnatural offences” in Zimbabwe, derived from the Roman-Dutch law existing at the Cape in 1891, and developed through precedent mainly by reference to South African cases. He notes statutory provisions penalising non-consensual sexual acts between women. He puts forward a theory at pages 29 and 30 of his report, which is not based on statute or any reported common law cases. He considers that the recently reconstituted and

compliant majority of the Supreme Court would permit the government to prosecute consensual lesbian sex on the basis of the Roman-Dutch common law, notwithstanding that there has been no such charge for over 150 years.

### *Prosecution*

31. Dr Phillips told us that it is not possible to offer any clear idea of how many prosecutions of men for homosexual offences have taken place in recent years, due to lack of reporting. The last Supreme Court report he can identify dates from 1991. It relates to a consensual homosexual act in a private place. A sentence of 10 months imprisonment with labour was reduced on appeal to a small fine. Dr Phillips considers that most prosecutions would take place in the Magistrates Court. They would never reach the High Court, Supreme Court or public ear and would go unreported. Sentences of less than 6 months are not automatically reviewed in the High Court, and are not traceable in public records. In his report, Dr Phillips says that the continuance of such prosecutions is “clearly illustrated by the report in the press of the appearance in Bindura Magistrates Court of [2 men] on charges of sodomy on 19 December 2010. I am as yet unable to glean any information as to the sentences they received in exchange for their guilty pleas.” Updating this in his evidence, Dr Phillips said that more recent information is that the 2 men were in fact acquitted. There is confusion over whether guilty pleas had been tendered, which would appear anomalous, or whether there was a trial. It is clear from all sources, however, that there were no convictions.
32. In May 2010, police with a search warrant entered the GALZ offices, looking for suspected dangerous drugs and pornographic materials. They removed DVDs, 3 computers and other physical items. These have not been returned, although GALZ, through ZLHR, has sought their release. Two men were detained during the raid. They have been variously described as two employees or members of GALZ, or as one employee and a visitor to the premises, who was neither a member nor an employee. Nothing turns on those minor discrepancies. The men were detained for a few days, but released without charge. They have not been prosecuted.
33. Various sources, including ZLHR, describe the recent instance of 5 men, known homosexuals, who were arrested in a private home for “criminal nuisance.” This did not result in any prosecution.
34. GALZ at interview said that they were not aware of any cases of consenting adults prosecuted for sodomy in 2009, 2010 or 2011. They referred to the Bindura case of 2010. They described it as a case of a male gay couple reported by their landlady, resulting in acquittal. Cases of threatened arrest and complaints to the police, not resulting in prosecution or even in many cases of detention, were said to run at 3-4 per month. There were no current prosecutions.

35. ZLHR were similarly not aware of any convictions for sodomy in 2009, 2010 or 2011. They were aware of threats of arrest being used regularly to harass homosexual men and women.
36. In cross-examination, Dr Phillips told us that his information is that the Bindura case was the only one to have come in front of that Magistrates Court, where several Magistrates sit, for several years. He explained that as well as regional Magistrates Courts there are local Magistrates Courts, where proceedings are summary and informal. He thought that despite the lack of public records or press reporting, it remains possible that there are prosecutions of consensual homosexual conduct in those lower courts. He did not think there would be many.
37. Dr Phillips has no record of any case in either South Africa or Zimbabwe of prosecution of two women engaging in consensual sexual activity.
38. Dr Phillips constructed a rather ingenious argument on the possibility of prosecution of consensual lesbian activity. We were inclined to agree that it was not beyond imagination that if President Mugabe insisted on such a prosecution in some high profile case, the Attorney General and Supreme Court might bend to his will. As there had never been such a case, we considered that possibility so remote as not to pose a real risk to any Zimbabwean lesbian.
39. We have, since the hearing, noted this section of The Criminal Law (Codification and Reform) Act:
- 3. Roman-Dutch criminal law no longer to apply**
- (1) The non-statutory Roman-Dutch criminal law in force in the Colony of the Cape of Good Hope on the 10th June, 1891, as subsequently modified in Zimbabwe, shall no longer apply within Zimbabwe to the extent that this Code expressly or impliedly enacts, re-enacts, amends, modifies or repeals that law.
- (2) Subsection (1) shall not prevent a court, when interpreting any provision of this Code, from obtaining guidance from judicial decisions and legal writings on relevant aspects of—
- (a) the criminal law referred to in subsection (1); or
- (b) the criminal law that is or was in force in any country other than Zimbabwe.
40. That further diminishes any possibility of prosecuting lesbian behaviour.
41. Zimbabwe has a lively press, although largely subservient to President Mugabe. There are active human rights organisations which follow gay and lesbian issues, and publish reports. If consensual homosexual conduct was being prosecuted, even in the lower courts with minimal penalties, we consider that there would have been some press reporting, and that organisations like GALZ and ZLHR would know about it. Dr Phillips frankly accepted that he was proceeding upon assumptions and not upon available data, and he thought that the incidence of such prosecution would be low. The other sources before us, including the US State Department

Country Report, consistently state that there have been no recent prosecutions of consensual homosexual conduct.

42. The only conclusion sensibly available is that such conduct is not prosecuted to any meaningful extent.

#### *Police detention, and blackmail*

43. There is obvious force in the remarks recorded by Dr Phillips in 1993 when he interviewed the Director of Public Prosecutions, who is now a High Court Judge. The interviewee opined that the law against homosexual sex “has the main effect of working as a blackmailer’s charter”. The passage of time, with increasing public homophobia, is only likely to have made matters worse.
44. We are satisfied from Dr Phillips’ report, and from other evidence, that attempted extortion, and police detentions of homosexuals, do occur. Such detentions do not result in prosecutions for homosexual offending. GALZ and ZLHR have devised successful strategies for dealing with blackmail attempts, relying on the fact that while prosecutions for homosexuality are virtually unknown, the penalties for blackmail are serious (GALZ website, “The blackmailer’s charter”).
45. Parties did not direct us to evidence of the numbers of such incidents, but we have noted the International Gay and Lesbian Human Rights Commission (IGLHRC) report of 15<sup>th</sup> February 2011, filed for the appellant. This describes an average of one case per month coming to attention in 2003, the police being actively involved in half of them. There is no description of how the statistics were obtained.
46. The examples found in the background evidence concern male homosexuals only. There are no reports of such treatment suffered by lesbians.
47. The practice is common enough for GALZ and ZLHR to have worked out how to deal with it, but we conclude that the evidence does not demonstrate instances of attempted extortion, false complaints to the police, and unjustified detentions which are so prevalent as to constitute a general risk.

#### *Murder*

48. Dr Phillips’ report at page 61 refers to sometimes fatal consequences for those perceived to be gay. In his oral evidence, however, Dr Phillips accepted that he knew of no murder where homophobia was with confidence alleged to be the motive. His *caveat* was that he did know of a few instances where a homophobic motive had been suspected by GALZ, but there had been no direct evidence to that effect.
49. Murders with a homophobic element may of course occur in Zimbabwe, and may not appear as such in any public record. Neither party referred us to any evidence of

such events, nor have we found any. We find nothing to support the proposition that this is a real risk to homosexuals of either gender.

*“Corrective rape”*

50. This term refers to the practice of homosexuals, both male and female, being raped by persons of the opposite sex with the intention of converting their sexuality.
51. The Appellant relied upon an internet report from SW Radio Africa, dated 8 April 2010, by Violet Gonda, “Corrective rape against homosexuals on the rise in Zimbabwe”. The author cites the US State Department Report on Zimbabwe, which appears to be the 2009 report, published in April 2010. She asserts that through the guise of corrective rape, lesbian women are raped by men to make them enjoy heterosexual acts, while gay men are raped by women, sometimes under supervision of villagers and relatives, to remove their sexual orientation. It is asserted that the source shows that some homosexuals are forced to marry to encourage heterosexual conduct, while others are taught the error of their ways by being raped by family members.
52. The US Department of State Report 2010, published on 8 April 2011, does not go quite that far. At Section 6, the report states:

General homophobia and restrictive legislation made it difficult for the LGBT community to feel safe about being open about their sexuality in public. Because of significant social pressure, some families reportedly subjected men and women to “corrective” rape and forced marriages to encourage heterosexual conduct: the crimes were rarely reported to police. Women, in particular, were subjected to rape by male members of their own families.

53. No statistics are given, and no source is identified.
54. The COIR of 19 August 2011 contains only the following passages on “corrective rape.” (The same appeared in the COIR of 25 March 2011.)

20.33 The Institute for the Democratic Alternative for South Africa noted in its *States in Transition Observatory* (SITO report) - Zimbabwe Government of National Unity Watch, April 2010, dated 14 May 2010, that: “Corrective rape against gay men and lesbians is on the rise. Victims are particularly vulnerable given the stigma attached to homosexuality in Zimbabwe which makes it difficult for them to report crimes or seek medical attention.”

20.34 An article in *New Zimbabwe*, titled *Interview: GALZ's Fadzai Muparutsa*, dated 13 April 2010, recorded the response of Ms Muparutsa to the question “...has your Association [GALZ] actually received such reports [of “corrective” or “curative” rape]?”: — “Yes we have. ... there aren’t that many, we can’t say it is on the increase but what’s happened of late is that people are talking a lot more about it and so people will come to the office and report cases that they have experienced and particularly at the

hands of either their families, because this kind of rape usually happens in private spaces, in the homes or in close knit societies that our members stay in.”

55. Dr Phillips was questioned at some length on this issue. He had only ever heard of two examples of “corrective rape” in Zimbabwe, both being the rape of lesbian women. He referred to the rape of Ms Chipo Machida in his report because she had made public disclosure of her rape, as being at the instigation of her parents, and as being intended to result in her conception of a child. He had not referred to the other example, and did not wish to name the woman concerned, because she made the disclosure to him in confidence.
56. Dr Phillips says in his report that Ms Machida believes that her experience is not exceptional amongst the lesbians that she knows. However, in his oral evidence he told us that he did not believe there to be such a “practice” or “culture” in any area of Zimbabwe, or within any ethnic community in Zimbabwe. He distinguished between the situation in Zimbabwe and in South Africa, because in the latter it could properly be said that there is such a practice in some communities.
57. We think that through Dr Phillips’ close contacts with GALZ and ZLHR, and the nature of his research, he would hear of any examples of “corrective rape” known to Ms Muparutsa (the GALZ representative interviewed above), and if there has been a real rise in this practice, he would be well aware of it.
58. From the references parties made to the sources before us, from our own examination of them, and from the evidence of Dr Phillips, our assessment is that “corrective rape” is rare. We accept that it does happen, and of its nature must often be a hidden crime, but it does not represent a real risk to homosexuals of either gender.

*Dr Aguilar’s report*

59. The report (undated) runs to 7 pages. Dr Aguilar explains that in both Shona and Ndebele culture, an individual’s ties to family and community are paramount, whether the individual is Christian or not. Those ties are developed through marriage and through procreation of children. Marriage of its young women may be an important economic consideration for a family, because the receipt of “bride price” in turn allows its young men to marry.
60. Dr Aguilar’s opinion is that homosexuality within such a culture is a denial of the cycle of life, and of fertility. Thus it is viewed as unnatural and outside social norms, but also as harmful and dangerous to the wellbeing of the extended family, because it places the lineage at risk.
61. Dr Aguilar’s description of the general background is consistent with the report by Dr Phillips, and with the other sources.

62. Presumably the report was publicly funded, and the author and the appellant's solicitors thought at the outset that it might be of some assistance. We were shown the relevant email exchange. On 21 April 2011 the author accepted instructions on the express basis that she would not give oral evidence. While she explains how she knows the region, Dr Aguilar does not tell us whether she has ever lived in Zimbabwe, or even visited. Her footnotes suggest that she has undertaken some direct research with individuals and groups in Zimbabwe, but details of those conversations are not provided. Lacking such references, and given her non-availability to be questioned, we are unable to ascertain who she consulted, or when. We note that her answer to the question whether there is criminal prosecution of homosexuality in Zimbabwe is based on a well known reported case in Malawi. We find it strange that an expert should be unwilling to have her evidence and opinions tested at a hearing. In submissions, neither party suggested that this report helps to resolve any issue before us. It has played no significant part in reaching our conclusions.

*The WOZA interview*

63. WOZA was formed in 2003 to represent women's interests in Zimbabwe. It currently has some 75,000 members, spread around the country. It appears to us to be a responsible and reliable source. Some of the information it provided at interview is worth setting out at length, because it is in point, and is not generally available.
64. GALZ and ZLHR are also significant and reliable sources, but they have specialised interests, and are tiny by comparison; only a few hundred members. There are, however, no significant contradictions in the information provided by the three organisations.
65. These are excerpts from the interview conducted by Mr Marshall of the British Embassy, Harare, with an official of WOZA on 23 August 2011. (The record has been edited for grammatical consistency only.)

Q22. Are the younger generation more accepting of gays/lesbians?

**A. It is difficult to say as most Zimbabweans including younger people are more interested in fundamental issues such as food, housing, education and jobs. Generally Zimbabweans do not tend to openly discuss their sexuality.**

Q25. Is it socially acceptable for two men to live together? Would they experience societal discrimination as perceived gays?

**A. Generally it would be acceptable for two men to live together, and it would be assumed they were relatives, friends, or from the same village. It would not necessarily be assumed they were homosexual.**

Q26. Is it socially acceptable for two women to live together? Would they experience societal discrimination as perceived gays?

**A. Generally it would be acceptable for two women to live together, and similar to men, it would be assumed they were friends, relatives, or from the same village. It would not necessarily be assumed they were homosexual.**

Q28. In general, are younger women who are not yet settled more at risk, or does the risk increase with age?

**A. Perceptions and expectations are changing in Zimbabwean culture, across both urban and rural societies. In the past women would have been expected to marry young and produce a family, but the onset of HIV/AIDS pandemic has seen an increase in young widows and the early death of young women leaving orphaned children. Women are now being encouraged to delay marriage and sexual activity to lessen the risk. WOZA has done a great deal of work in the communities educating women on their rights and value in society.**

Q30. Is there any information about whether open or perceived lesbians are at risk in Zimbabwe?

**A. It all depends upon the individual. Whilst high profile persons perceived to be gay might be at risk from increased interest and speculation on their sexuality, primarily in the media, ordinary persons are less likely to be at similar risk or risk of violence.**

Q31. Whilst the greatest risk is in the metropolitan area, outside the cities does gossip about a woman with no children or male friends (unless there is an obvious good reason) entail risk, or additional risk?

**A. We do not believe this to be the case.**

Q34. If a woman has no male friends, what is the reaction of local men? Would it be assumed by the wider community that a lack of male friends suggest that a woman is sexually "available"? Would a rejection of advances by men be accepted, or is there a chance of a violent response? What type of response would a woman get – would she be able to walk away, or would there be a likelihood of violence or even murder?

**A. It would depend upon the woman's activities. If a woman selected a number of sexual partners, she might be viewed as promiscuous. It is unlikely any rejection of sexual advances would result in physical violence, but there might be some verbal abuse.**

Q35. Is it likely that someone would lose their job and be asked/forced to leave their home if they were perceived to be gay or lesbian?

**A. It could depend upon the nature of the employment. If a person were employed in the civil service or in a government job, then it is very possible they might lose their jobs if their employer became aware the individual was homosexual. It might be less likely in other jobs. WOZA is not aware of a person losing accommodation because of their sexual orientation.**

Q36. Do we have any information on whether rejection of suitors by single women would be a risk factor?

**A. It would depend upon individual circumstances, but generally it would be unlikely this would put the woman at increased physical risk.**

Q37. Because the risks arise from perceived as well as actual lesbian sexual orientation, does internal relocation enhance safety or not?

**A. Internal relocation from rural to urban locations might be more successful as it would be likely there are larger gay communities in the urban areas. Relocation from urban to rural would be unlikely to succeed as there would be no open gay community.**

Q38. Are newcomers in rural communities subject to speculation about their sexuality (derived from asking questions and observation)? In this case, would they be at risk of being identified as lesbians or gays?

**A. The most likely reaction to newcomers to rural areas would be curiosity. It is unlikely speculation would be made upon their sexual orientation.**

Q39. Are women expected to become sexually active early and remain so into their sixties, unless there is an obvious reason why they do not currently have a partner such as recent widowhood?

**A. Zimbabweans both in the urban and rural areas are becoming more cautious about their sexual activity since the onset of the HIV/AIDS pandemic.**

### *The gay scene*

66. There was debate before us as to whether anything in Zimbabwe could properly be described as a gay community, or gay venue.
67. GALZ is able to organise some social events for its members in Harare. There are two annual functions that have been held for a number of years. One is timed to observe the international Gay Pride month of June. The other, home grown, event is "ZimPride", or "The Jacaranda Festival", over a week in October, culminating in the Miss Jacaranda Queen Drag Pageant. To date, despite difficulties, this has been held in a public hall.
68. The International Gay Guide, Spartacus, 2009 edition, states that there were two gay friendly nightclubs in the Borrowdale area of Harare.
69. Dr Phillips denied that Harare ever had a gay bar or gay club, although he accepted that there were historically bars and clubs where homosexuals were at least tolerated. He considered that difficulties would arise for the owners and operators of such businesses if they permitted overt displays of affection such as kissing, and so behaviour was moderated accordingly.
70. A BBC article dated 7 August 2007 describes "The Book Café" in Harare as the "epicentre of Harare's alternative culture". That venue has also historically been

acknowledged by GALZ itself as a gay friendly venue. The only evidence that we have seen of this venue experiencing difficulties with the authorities is a report on the *African Activist* website dated 26 June 2011, which carried an article originally published by *Bulawayo24 News*:

Zimbabwe police are investigating Book Café in Harare after a group of LGBTI persons showed up for a 4 June concert by afro-pop artist John Pfumojena. Some members of the group were dressed in drag and showed public signs of affection. Criminal Investigation Department (CID) spokesperson Inspector Zimbili said, 'The law is very clear on that matter; if there was a gay parade or festival at that mall, we are going to carry [out] a full investigation.'

71. An official of GALZ volunteered to the UKBA Fact Finding Mission 2010 that Bulawayo is more open and tolerant and has a very different atmosphere from Harare, with a gay nightclub in the middle of town. Dr Phillips told us that he was unable to provide any specific assistance in relation to Bulawayo, because although he had regularly visited the city, he had not spent any significant periods of time there. He was prepared to accept that Bulawayo would be a more tolerant society than Harare.
72. At the end of 2004 there were 9 different regional groups or associations affiliated with GALZ. There is no evidence that any of these regional groups have subsequently ceased to function. It follows that in these nine towns or cities there are some, although perhaps limited, opportunities for homosexuals to meet and socialise - Bulawayo; Chipinge; Chitungwiza; Marondera; Masvingo; Mutare; Penhalonga; and Victoria Falls.
73. It may be that this evidence of a community, with regional centres, lies behind the claim in a news article published by *The Zimbabwean*, dated 18 April 2011, to the effect that Zimbabwe has a flourishing gay community.
74. It was Mr Selway's position that there was no gay scene, because no individual could ever risk being identified as gay. We are satisfied that is too simplistic an approach, not borne out by the evidence. The degree of openness with which homosexuals may live is not as in Western Europe or North America, but it is rather more than Dr Phillips was prepared to acknowledge, particularly among the professional and educated classes, and in the urban centres of Harare and, more so, Bulawayo. There is a limited "gay scene."

#### *Women on their own*

75. Our understanding of the position of women on their own in Zimbabwe is derived mainly from the evidence of Dr Phillips. It is confirmed by the other sources before us, and brought up to date in light of the information from WOZA.
76. Historically, women were expected to become sexually active early and to remain so into their sixties. Social attitudes are changing as a result of HIV/AIDS, so that

Zimbabwe is more accepting of delay by a woman to the start of her sexual activity, and self-restriction of the number of sexual partners she may take.

77. The extended family of a woman traditionally had an economic interest in her availability for marriage. The division between the position of a woman in a polygamous cultural marriage, and a single woman who lives alone as an individual's mistress, is not clear cut. The position of the latter may with time be indistinguishable by society from that of the former. Zimbabwean society does not discriminate against a woman who chooses to take the role of a mistress, and a large number of women do. There are, of course, many monogamous married couples, but there has been historically a significant number of mature women not living in a monogamous relationship.
78. Historically a single woman living alone was at risk of the perception that she was a prostitute, a mistress, or a lesbian, but that too is changing as a result of HIV/AIDS. Accordingly, lesbians who are either naturally discreet, or who are willing to present a heterosexual narrative for family or societal reasons, are unlikely to be identified as such.
79. An economically active lesbian is at less risk of perception as a lesbian because she is more likely to be able to afford to live in a low density housing area, and so to enjoy a measure of protection from public scrutiny of her lifestyle and circumstances, which a woman living in a high density housing area would not be able to enjoy.
80. The perception that a woman is a lesbian may lead to discrimination or harassment from some individuals, but not generally to violence. There is a higher level of tolerance of homosexuality within Zimbabwean society than government rhetoric would suggest.
81. Where a real risk of persecution or serious harm is established, the police do not offer lesbians any sufficient protection.
82. GALZ is a long established organisation, with nine affiliated organisations across Zimbabwe, whose existence is tolerated. If a lesbian is willing to join the organisation (which can be done on line without visiting Harare) GALZ is able to provide some support to her, including practical support in providing access to lawyers (through ZLHR), and to doctors and clinics which are not homophobic.
83. ZLHR have had considerable success in dealing with cases of blackmail referred to them by GALZ. Thus although there is a small risk that a woman perceived to be a lesbian might face an attempt at blackmail, there is a means of redress.

*Prime Minister Tsvangirai's remarks on 24 October 2011*

84. Dr Phillips' report points out at pp. 35-36 that one of the few constitutional issues on which President Mugabe and Prime Minister Tsvangirai have agreed is that the proposed new constitution is to exclude any explicit provision of rights for gays and

lesbians. This approach may be a pragmatic political necessity binding the MDC, but it reflects the strictures on Zimbabwean public debate on such issues. President Mugabe's posturing on the issue and his identification of any other view as alien, colonial and western made it practically impossible for anyone publicly to take a more liberal and tolerant position.

85. We were persuaded by Dr Phillips' analysis of the public debate; but it has since moved on.
86. After the hearing, the respondent drew our attention to a BBC news item of 24 October 2011:

Zimbabwe's Prime Minister Morgan Tsvangirai has reversed his position on gay rights, saying he now wants them enshrined in a new constitution. He told the BBC that gay rights were a "human right" that conservative Zimbabweans should respect.

... Mr Tsvangirai told BBC's Newsnight programme that there was a "very strong cultural feeling" against homosexuality in Zimbabwe, but he would defend gay rights if he became President.

... "It's a very controversial subject in my part of the world. My attitude is that I hope the constitution will come out with freedom of sexual orientation, for as long as it does not interfere with anybody," he told Newsnight's Gavin Esler. "To me, it's a human right," he said.

Zimbabwe's long-time leader Mr Mugabe - a practising Christian - once said gays were "worse than pigs and dogs", sparking international condemnation.

In March 2010, Mr Tsvangirai said gay rights was not up for discussion in Zimbabwe. ["I totally agree with the president," he said at the time.](#) Mr Tsvangirai's U-turn suggests that he now wants Zimbabwe to adopt a liberal policy, similar to that of neighbouring South Africa. But he will face strong resistance from Mr Mugabe, who will exploit Mr Tsvangirai's U-turn to drum up support for himself in the run-up to the election...

87. The respondent copied this to Mr Selway. He had no objection to the news item being admitted into evidence. He submitted in writing that it was only a small step in the right direction, and that the Commission on the Constitution had "no intention of granting rights to LGBT people .... Further, it is highly unlikely that [Mr Tsvangirai's] words will have any ... impact on the deeply entrenched homophobia that is evident in all walks of life in Zimbabwe."
88. We recognise that in making this a public issue, Mr Tsvangirai's words may have the short term effect of provoking even more homophobic rhetoric. However, we think it also shows the underlying reality that the general public is not as hostile to homosexuals as the President's political bombast suggests. The news item has not altered our conclusions, but it tends to reinforce them.

*News item, 15 August 2011*

89. Mr Parkinson drew our attention to a news item which was in the bundles of both sides, from *Zimbabwean News Online* of 15 August 2011, headlined:

The assistant editor from *H-Metro* faces dismissal after being caught red-handed bonking a male hooker during a Presidential trip to Windhoek.

90. This is a story, in rather lurid terms, of a favoured journalist whose turn it was to join the Presidential entourage on a foreign trip, and who had caused similar embarrassment previously. It is speculated that he now faces the sack.
91. Mr Selway accepted that this might incidentally reveal a degree of practical tolerance in elite circles. He argued that we could not draw any general conclusion from one such example.
92. We agree that such a report cannot by itself lead to any overall finding. We note that even if the journalist concerned previously escaped any consequences of such behaviour becoming public, he may have reached the limits. However, we do find this another example of the gulf between rhetoric and reality.

#### *HIV/AIDS*

93. RS and Others (Zimbabwe - AIDS) Zimbabwe CG [2010] UKUT 363 (IAC) found that a significant number of people are receiving treatment for HIV/AIDS in Zimbabwe, and a Zimbabwean returnee will not succeed in a claim for international protection on the basis of a diagnosis of HIV/AIDS unless the case crosses the threshold identified in N v SSHD ([2005] UKHL31, N v UK ECHR 26565/05, 2008). RS also found that although there is some evidence of discrimination in access to AIDS medication and food, it is not such as to show a real risk of such discrimination. We have not been shown any more recent evidence to indicate any change in these matters.
94. Mr Selway in his written argument invited us to find that even if there were no general risk of persecution of homosexuals, the fact of being both homosexual and suffering from HIV/AIDS would give rise to a risk, when coupled with discrimination in access to medication and food.
95. This point was not developed by reference to evidence on either side. It does not arise on the facts of the present case. There is evidence that GALZ can assist where necessary in identifying sympathetic medical professionals.
96. We cannot exclude HIV/AIDS as a factor in other cases, but nothing before us suggests that homosexuality and a positive diagnosis, without more, would found a claim for protection.

#### *Return from the UK*

97. Mr Selway invited us to hold that lesbians and gays returning from the UK “... could be considered to carry back their gay infection from the colonial oppressors,” and so might be at the same risk as returning political activists.
98. This proposition derives from the fact that time spent in the UK has been found to be among potential risk factors, and from the anti-western aspect of anti-homosexual discourse. It is speculative. We have not been referred to any evidence that time abroad has worsened the situation of any homosexual in Zimbabwe, and we have not identified such evidence amongst the documents before us. We decline to make the finding sought.

*General risk to homosexuals*

99. We have tried to approach the evidence and submissions so as to resolve the case by following HJ & HT. Lord Hope said at paragraph 35:

This brings me to the test that should be adopted by the fact-finding tribunals in this country... It is necessary to proceed in stages.

(a) The first stage, of course, is to consider whether the applicant is indeed gay. Unless he can establish that he is of that orientation he will not be entitled to be treated as a member of the particular social group. But I would regard this part of the test as having been satisfied if the applicant’s case is that he is at risk of persecution because he is suspected of being gay, if his past history shows that this is in fact the case.

(b) The next stage is to examine a group of questions which are directed to what his situation will be on return. This part of the inquiry is directed to what will happen in the future. The Home Office’s Country of Origin report will provide the background. There will be little difficulty in holding that in countries such as Iran and Cameroon gays or persons who are believed to be gay are persecuted and that persecution is something that may reasonably be feared. The question is how each applicant, looked at individually, will conduct himself if returned and how others will react to what he does. Those others will include everyone with whom he will come in contact, in private as well as in public. The way he conducts himself may vary from one situation to another, with varying degrees of risk. But he cannot and must not be expected to conceal aspects of his sexual orientation which he is unwilling to conceal, even from those whom he knows may disapprove of it. If he fears persecution as a result and that fear is well-founded, he will be entitled to asylum however unreasonable his refusal to resort to concealment may be. The question what is reasonably tolerable has no part in this inquiry.

(c) On the other hand, the fact that the applicant will not be able to do in the country of his nationality everything that he can do openly in the country whose protection he seeks is not the test. As I said earlier (see para 15), the Convention was not directed to reforming the level of rights in the country of origin. So it would be wrong to approach the issue on the basis that the purpose of the Convention is to guarantee to an applicant who is gay that he can live as freely and as openly as a gay person as he would be able to do if he were not returned. It does not guarantee to everyone the human rights

standards that are applied by the receiving country within its own territory. The focus throughout must be on what will happen in the country of origin.

(d) The next stage, if it is found that the applicant will in fact conceal aspects of his sexual orientation if returned, is to consider why he will do so. If this will simply be in response to social pressures or for cultural or religious reasons of his own choosing and not because of a fear of persecution, his claim for asylum must be rejected. But if the reason why he will resort to concealment is that he genuinely fears that otherwise he will be persecuted, it will be necessary to consider whether that fear is well founded.

(e) This is the final and conclusive question: does he have a well-founded fear that he will be persecuted? If he has, the causative condition that Lord Bingham referred to in *Januzi v Secretary of State for the Home Department* [2006] 2 AC 426, para 5 will have been established. The applicant will be entitled to asylum.

100. Lord Rodger said at paragraph 82:

When an applicant applies for asylum on the ground of a well-founded fear of persecution because he is gay, the tribunal must first ask itself whether it is satisfied on the evidence that he is gay, or that he would be treated as gay by potential persecutors in his country of nationality.

If so, the tribunal must then ask itself whether it is satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant's country of nationality.

If so, the tribunal must go on to consider what the individual applicant would do if he were returned to that country.

If the applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he has a well-founded fear of persecution - even if he could avoid the risk by living "discreetly".

If, on the other hand, the tribunal concludes that the applicant would in fact live discreetly and so avoid persecution, it must go on to ask itself *why* he would do so.

If the tribunal concludes that the applicant would choose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, e.g. not wanting to distress his parents or embarrass his friends, then his application should be rejected. Social pressures of that kind do not amount to persecution and the Convention does not offer protection against them. Such a person has no well-founded fear of persecution because, for reasons that have nothing to do with any fear of persecution, he himself chooses to adopt a way of life which means that he is not in fact liable to be persecuted because he is gay.

If, on the other hand, the tribunal concludes that a material reason for the applicant living discreetly on his return would be a fear of the persecution which would follow if he were to live openly as a gay man, then, other things being equal, his application should be accepted. Such a person has a well-founded fear of persecution. To reject his application on the ground that he could avoid the persecution by living discreetly

would be to defeat the very right which the Convention exists to protect – his right to live freely and openly as a gay man without fear of persecution. By admitting him to asylum and allowing him to live freely and openly as a gay man without fear of persecution, the receiving state gives effect to that right by affording the applicant a surrogate for the protection from persecution which his country of nationality should have afforded him.

101. Mr Selway argued that the situation of homosexuals in Zimbabwe is closely comparable to that in Jamaica, set out in SW (lesbians – HJ and HT applied) Jamaica CG [2011] UKUT 00251 (IAC), and that we should make similar findings.
102. SW found that Jamaica is a deeply homophobic society, where lesbianism (actual or perceived) brings a risk of violence, including “corrective rape” and even murder.
103. We are unable to uphold this submission. The history and culture of Jamaica and Zimbabwe are very different. The public expression of homophobia in Zimbabwe is relatively recent and politically motivated – more of a rabble-rousing distraction. As Dr Phillips explained, the historical background is indifference rather than homophobia. The phenomenon does not have the same deep roots. The clear danger of violence to homosexuals in Jamaica is not paralleled in Zimbabwe. Conclusions cannot be mapped across without evidence from one continent to another.
104. Dr Phillips described to us the ways in which GALZ is very careful to operate within the law. He accepted, however, that if President Mugabe wished to take stern action against the organisation, or even to close it down, legal niceties would not prevent him. GALZ leads an uncertain existence, but it carries on within a degree of tacit official and social tolerance.
105. We have recognized that Dr Phillips has an expert knowledge and understanding of Zimbabwean society and culture in general, and of the historical situation of homosexuals in particular. His analysis of the less obvious social forces at work is persuasive. We accept that some gay men are harassed and blackmailed, and that some gay women are pressurised to engage in sexual relations and to marry, without many such cases emerging in reported cases or published statistics. On the other hand, we think there is a gap in the evidence which shows the conclusions reached by Dr Phillips to be too sweeping. (As we have noted, he fairly modified some of his conclusions during his evidence, partly in the light of more up to date information he had received.) At page 91, among his conclusions, Dr Phillips says, “The authorities in Zimbabwe continue to pose a real threat to homosexuals in Zimbabwe, not least through their refusal to offer them ready access to the protection of the police.” However, to find a direct threat from the authorities goes significantly further than the interviews with respected in-country human rights organisations and the other evidence before us. We agree with Dr Phillips about lack of protection; but the way he poses his conclusion, in that context, is significant.
106. The argument for the appellant, and the ultimate conclusions in Dr Phillips’ report, fall down on the absence of evidence that either the authorities or non-state actors

persecute homosexuals in Zimbabwe to a significant extent. Extortion, sometimes with police connivance, is the best documented risk, but even that is not very common, and it can be dealt with. We conclude that the formality of the law and the vehemence of public rhetoric are not matched by reality.

107. The worsening economic collapse of Zimbabwe from about 2000 led to large scale emigration, the need for remittances being a major driver (see the summary in the COIR at 27.05-07). It occurred to us that one reason for the relative lack of evidence that homosexuals are badly treated might be that their disadvantages led them to leave to an even greater extent than other elements of the population. However, if that were so we would expect to hear it said, loudly, by human rights groups in and out of the country. The absence of such evidence shows that homosexuals, although subject to some disapproval and discrimination, have not found this so endemic or oppressive that they abandon the country in significant numbers.
108. GALZ describes Zimbabwe as “not the worst place in the world to be gay or lesbian even though the President, government officials and church leaders have whipped up a climate of hysterical homophobia.” That is an admirably phlegmatic and realistic view.
109. We are unable to accept that homosexuals are being persecuted as a generality when concrete examples are few, and when that standpoint is not supported by the best placed local observers (other than Dr Phillips, and we have explained why we do not entirely share his conclusions).
110. We have further and better evidence than was before Immigration Judge Birkby in the AIT, both on the country situation and on the appellant’s individual circumstances. The evidence does not support the conclusion that the Zimbabwean authorities persecute homosexuals. Homosexuals mainly enjoy tacit tolerance, as does GALZ. The cases of HJ & HT arose from Iran and Cameroon. Unlike those countries, and unlike Jamaica, Zimbabwe is not, on all the evidence to which we have been directed, a country where a finding that a person is gay dictates that persecution is reasonably to be feared.
111. This case does not concern an openly gay person. Such a case would have to be assessed on its own facts. HJ & HT makes it clear that the test is not whether persecution may be avoided by behaving more discreetly. A case might be based partly on habits acquired under the greater freedom of life abroad. On our findings, being openly gay does not translate into a real risk, but it might well be a significant factor.

#### *Sufficiency of protection*

112. On this issue there is no difficulty. The sources agree, and the respondent accepts, that anyone who is at risk of persecution in Zimbabwe as a homosexual, male or

female, will not receive legal sufficiency of protection from the police or other state agencies. Resort to such agencies may even make matters worse.

### *Elite connections*

113. For reasons given in Appendix B, we find that the appellant would be personally discreet in Zimbabwe, by choice. Nevertheless, her sexual identity, in the context of her family connections among the Zimbabwean elite, gives rise to a risk. (There were no findings on this family relationship in the AIT determination.)
114. We do not conclude that, in general, connections with the elite raise the threat to a homosexual. The reverse is more likely. Cases like the present will be the exception, not the rule.

### *Internal relocation*

115. Given the absence of general risk, a homosexual at local and personal risk in his or her community can move elsewhere without much difficulty. That might be within the same city, or in another part of the country. He or she might choose to relocate where there is greater tolerance, such as in Bulawayo, but the choice of a new area is not restricted. The option is excluded only if personal circumstances create a risk throughout the country (as is the case for the present appellant).

### *Country guidance*

116. We draw together our conclusions, as follows. There has been much public expression of extreme homophobia at the highest levels in recent years. Male homosexual behaviour is criminalised, but prosecutions are very rare. Lesbianism is not criminalised. Some homosexuals suffer discrimination, harassment and blackmail from the general public and the police. Attempted extortion, false complaints and unjustified detentions are not so prevalent as to pose a general risk. There are no records of any murders with a homophobic element. "Corrective rape" is rare, and does not represent a general risk. There is a "gay scene," within limitations. Lesbians, living on their own or together, may face greater difficulties than gay men. GALZ (Gays and Lesbians of Zimbabwe) takes a realistic view: Zimbabwe is "not the worst place in the world to be gay or lesbian even though the President, government officials and church leaders have whipped up a climate of hysterical homophobia." Applying HJ & HT, there is no general risk to gays or lesbians. Personal circumstances place some gays and lesbians at risk. Although not decisive on its own, being openly gay may increase risk. A positive HIV/AIDS diagnosis may be a risk factor. Connections with the elite do not increase risk. The police and other state agents do not provide protection. A homosexual at risk in his or her community can move elsewhere, either in the same city or to another part of the country. He or she might choose to relocate to where there is greater tolerance, such as Bulawayo, but the choice of a new area is not restricted. The option is excluded only if personal circumstances present risk throughout the country.

### *The appeal of LZ*

117. The determination of the AIT is set aside. We remake the decision thus: the appeal is allowed under the Refugee Convention.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial "H" and a distinct loop at the end of the name.

Hugh Macleman  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

## APPENDIX A

Expert Report by Dr Oliver Phillips, 'The Risk for Lesbians and/or Homosexuals on Return to Zimbabwe.'

Expert Report by Dr Laurel Birch Aguilar, 'Local Beliefs in Relation to Attitudes toward Homosexuals in Zimbabwe and in this Region of Africa.'

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