

Human Rights Brief

for Traditional Leaders



ENGLISH



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Acronyms

AU	African Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
PSAf	Panos Institute Southern Africa
UDHR	Universal Declaration of Human Rights

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Foreword

Panos Institute Southern Africa (PSAf) values information as a tool for enabling different stakeholders to participate in development processes. In that regard, the organisation uses different innovative communication tools to facilitate access to and sharing of development information by different target groups, to ensure that information is used to foster development.

One such target group that PSAf works with to foster social change are traditional leaders, who influencers of opinion and custodians of cultural practices, with a strategic role to play in fostering human rights protection at community level, addressing the socio-cultural drivers of discrimination, victimization and marginalization.

This Human Rights Brief has therefore been developed as a reference tool to provide Traditional Leaders with information that will enable them to play this role effectively. The brief is aimed at ensuring availability of information that will build traditional leaders understanding on the strategies and opportunities that they can use in protecting human rights. Increased understanding of the subject will contribute to improving traditional leaders' role in preventing human rights violations at community level.

The Human Rights Brief motivates traditional leaders to strengthen their influence by increasing their knowledge and information. Knowledge is power. Informed traditional leaders have the power to influence civic participation in sustainable development in a better way than when they are not informed. When well informed, it is easier for them to stimulate people in their community and other spheres of influence to also act in a positive way. The information provided in this brief provides that foundation for traditional leaders to drive informed participation, and ensure that different stakeholders at community level uphold these.

It is our hope that this human rights brief will contribute to improved quality of engagement on human rights protection at community level, which will in turn contribute to improved socio-economic development of the vulnerable groups.

The information provided herein is designed in a manner that will enable Traditional Leaders to work closely with local government officials, government agencies and civil society organisations to support the empowerment of vulnerable groups in their communities and to sensitise their communities about human rights. It is our hope therefore that the traditional leaders will find this brief helpful in closing the gap in knowledge and understanding of human rights and thereby improve their role in the protection of human rights.



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Background

As a constitutional democratic state, Zambia protects its citizens' human rights through the constitution. The constitution is the supreme law that contains the bill of rights under part three. Apart from the constitution, Zambia is also a signatory to regional and international human rights instruments. These instruments are meant to provide protection from human rights violations such as discrimination, marginalisation and victimisation.

However, despite constitutionally guaranteed rights and the ratification of international human rights instruments, Zambia still faces serious challenges in protecting and fulfilling human rights. The most vulnerable groups to human rights violations in Zambia are women, children, elderly persons, prisoners, disabled persons, and people living with HIV as well as sexual minorities. The situation is worse for widows and girl children who are subjected to early marriages. These groups have historically suffered the most abuse and this situation still continues.

The human rights violations usually manifest themselves through lack of access to information, services and other social needs. These could include lack of access to health facilities, lack of access to education, being exposed to gender based violence and early child marriages, marginalisation and other forms of discrimination. There are many causes of these human rights violations. These include poverty, lack of awareness of one's rights, negative social perceptions and prejudices that cause stigma and hence discrimination.

Despite the challenges in respecting and protecting human rights, there are still several opportunities that exist to guarantee human rights. Among these opportunities is the strategic role that traditional leaders can play. Traditional leaders have a special position in Zambian society which puts them in a strategic position in the promotion and protection of human rights. This paper will explore how traditional leadership can use its position to protect and promote human rights.

1.1 The rationale for the involvement of traditional leaders in promoting and protecting human rights

Traditional leadership refers to the customary form of royal rule and leadership that has existed in different territories in Zambia and is based on regional ethnicity. Traditional leaders live among the communities that they oversee and are custodians of the customary law and practices of their territories or regions. Traditional leaders include chiefs, headmen and headwomen and chiefs councillors.

Traditional leadership is the oldest institution in Africa as a continent and in Zambia as a country. In Zambia, traditional leadership is formally recognised under part eleven of the constitution the chieftaincy Act, Chapter 287 of the Laws of Zambia. According to the constitution, chiefs are royal highnesses of the regions they oversee. This Act also states the function of traditional leaders in their regions.

Traditional leaders are critical in the promotion and protection of human rights for the following reasons:

- i) Traditional leaders are influential in most rural communities in Zambia and play a key role in advocating and driving social development processes. They also preside over customary law courts that exercise legislative power and maintain law and order at the community level. They apply customary law in traditional courts that can begin protecting human rights for all vulnerable groups in rural communities.

- ii) Traditional leaders reach thousands of people in their communities through community dialogues and advise government on traditional affairs. They therefore influence policy making that affects the lives of millions of people in mostly rural populations.
- iii) Traditional leaders have the influence to promote positive behaviour change as they play a pivotal role in educating youth on HIV and AIDS, promoting sexual reproductive health rights in the community.
- iv) In the area of human rights traditional leaders play a very important and strategic role in ensuring respect and promotion of human rights for their subjects. For social change processes in Zambia to be effective, traditional leaders must be an integral part of various aspects of socioeconomic development including human rights and citizen engagement.

Traditional leaders have a very critical role in influencing opinions. Over the years PSAf has learnt that engagement of community leaders in their local environment is more effective in winning them to appreciate what is at stake and play their role. This strategy has worked in addressing controversial issues such as gender-based violence, polygamy, wife-inheritance, child marriage and unsafe abortion. PSAf is persuaded that if the same approach is applied to the promotion and protection of human rights, it will achieve desired change.

The challenges leading to the lack of involvement of traditional leaders in protecting and advocating for the rights of sexual minorities in Zambia are caused by:

1. Lack of understanding of sexual diversity by traditional leaders
2. Low human rights knowledge by traditional leaders
3. Limited appreciation of their role in ending discrimination in their circles of influence.

Traditional leaders therefore need to be supported with relevant information to be abreast with the information to better advocate for equality and protect the rights of their people. PSAf therefore developed this information guide aimed at providing the basic information on human rights concepts, impact of human rights violations on vulnerable groups including sexual minorities. This information will create understanding of human rights concepts and build an appreciation of the role of traditional leaders in ending discrimination in their circles of influence. The guide provides the traditional leaders with information that will increase their understanding and appreciation of human rights for vulnerable groups to effectively play their role.

Basic concepts in human rights

2.1 Definition of Human Rights

Human Rights are entitlements and freedoms that every individual human being has by virtue of simply being human. For example the right to health. This means that every person has the right to access health facilities, to receive medicine and to live a healthy life.

Article 1 of the Universal Declaration of Human Rights (UDHR) affirms this principle and states that “All human beings are born free and equal in dignity and rights”. This pronouncement and principle in the UDHR is the umbrella for the enjoyment, protection and fulfilment of all human rights. This principle basically entails that individuals are equal and thus should enjoy their rights without discrimination or distinction.

Article 2 of the UDHR proclaims:

“Everyone is entitled to the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” In essence the UDHR proclaims the foundation for the enjoyment of all human right and this is the principle of equality and non-discrimination.

2.2 Enjoyment of Human Rights

Each and every person is entitled to enjoy human rights. The words “human” and “rights” means that every human being is entitled to enjoy the rights and freedom without any form of discrimination. This entails that a woman should not be denied access to land because she has no husband. Similarly, a homosexual or transgender person is entitled to enjoy human rights and should therefore not be discriminated against because of their sexuality. Human rights are for everyone to enjoy.

2.3 Characteristics of human rights

There are five basic characteristics of human rights as follows: -

2.3.1 Inalienability: Human rights are in-born in every human being and cannot be taken away because of either their sex, religion, status or other characteristics. Human rights are natural for every person everywhere in the world. For example the fact that a person is a homosexual, a child, a woman or prisoner does not mean that they do not have human rights. At birth these individuals received these rights everywhere in the world and these rights do not come to an end.

2.3.2 Universality: Human rights are inherent in every human being, everywhere and therefore are the same everywhere. It does not matter where a person is born or how the person is born, they all enjoy the same right and entitled to enjoy them. This means that everywhere in the world, human beings possess and are entitled to the same rights. For this reason it cannot be said it is un-African or un-Zambian to respect the rights of a woman, a transgender, homosexual or even a child. There are no rights that are only for Europeans, Americans, Africans, Indian, whites or black people.

- 2.3.3 Indivisibility:** Human rights cannot be divided in a way that make some rights more important and others less important. The principle of indivisibility entails that all human rights have equal status irrespective of whether they are categorised as economic, social, cultural, political or civil rights. In other words one right cannot be compromised over another. The principle of indivisibility goes together with the principle in interdependence.
- 2.3.4 Interdependent:** Human rights are depend on each other in order for human beings to enjoy them. This is why human rights cannot be taken away, are equal and cannot be divided in levels of importance. For example, the right to live depends on the right to health, the right to health depends on the right to food which depends on the right to land to produce food and so on. If one right is taken away or put as less important, then the enjoyment of the other rights will be affected.
- 2.3.5 Equality & Non-Discrimination:** The principle of equality and non-discrimination are said to be the corner stone of human rights. Equality means that all human beings are born free and equal. This equality of human beings as human beings is irrespective of the person's race, age, religion, political opinion, cultural, sex, gender, sexual orientation, gender identity, HIV status or whatever characteristic the person may have.

The fact that all human beings are equal entails that they should enjoy their human rights without discrimination. Discrimination means treating a person differently in a negative way because of that person's characteristics such as age, sex, sexual orientation, gender, identity, HIV status, religion or culture. When a person is discriminated against, their rights are violated and this leads to suffering. For example when a person is denied medical treatment because they are a homosexual, then they have been discriminated against on basis of their sexual orientation. This means that their right to health has been violated and because of this violation the person can die due to receiving no medical treatment. For this reason it is important for traditional leaders to ensure that all members in their communities are treated equally and without discrimination.

2.4 Types of rights

There are different types of rights and all these rights are equal, interdependent, indivisible and inherent in every human being. Human rights are categorised in two ways. These are civil and political rights on the one hand and economic, social and cultural rights on the other hand.

These are explained briefly below: -

1. **Civil and Political Rights:** Civil and political rights are a class of rights that entitle citizens of a state or society to live freely as individuals or groups. Civil and political rights create protection for individuals and groups from infringements by the government social institutions, private individuals and corporate persons. By protecting individuals and groups, civil and political rights ensure that citizens take part in the civil and political life of the society without discrimination, repression or limitation.

Examples of these rights are the right to vote, the right to life, freedoms of expression, association and assembly. These rights work together in order for citizens to enjoy them. For example citizens cannot enjoy the right to vote if they do not enjoy the freedom of assembly and association.

2. Economic, Social and Cultural Rights:

Economic, social and cultural rights are a class of rights that require actual fulfilment by the government through the provision of financial and material resources for citizens. These rights entail that the government has an obligation to create institutions that will be accessible to citizens without discrimination.

Examples of economic, social and cultural rights are; the right to health, the right to education, the right to housing, the rights to science, culture and heritage. For citizens to enjoy these rights, the rights have to work together. For example citizens cannot enjoy education without good health. Good health cannot be enjoyed without housing and the benefits of science. Good housing and science cannot be enjoyed without land, education and cultural heritage. This means that the rights are interrelated and interdependent.

State of human rights in Zambia

Human rights in Zambia are protected under the Bill of Rights which is part three of the constitution. As a member state of the United Nations and the African Union Zambia has ratified the major international and regional human rights instrument. This means that apart from the Bill of Rights in the constitution, international standards as created by these instruments also play a role in the protection of human rights in Zambia.

3.1 The Role of State

The state has the responsibility to respect, protect and fulfil human rights. When the state fails to carry out these duties, human rights violations occur. For example:

- i. Failure to respect: where citizens' rights to protest or to assemble is denied through police refusing a permit. Because the citizens have the right to assemble and freedom of expression, this becomes a violation to their rights.
- ii. Failure to protect: where the government does not provide adequate measures to prevent violations. For example many Zambians live in rural areas where many mining companies operate. The companies pollute the air, land, water and soil and cause diseases, death in crops, and insufficient access to water. This is a violation of many rights such as housing, health, land and the right to live itself on the part of the rural communities.
- iii. Failure to fulfil: when the government does not provide adequate social facilities. For example in most parts of Zambia people in rural areas do not have access to adequate health care institutions, schools, water and even basic needs for livelihood. Such failure to provide these amounts to a violation of broad range of economic, social and cultural rights.

3.2 The Role of the citizens

The society has a responsibility to protect other members of the community against human rights violations. However, because of negative social perceptions and cultural beliefs, certain groups such as the women, albinos, sexual minorities and even disabled persons are usually harassed, marginalized and dehumanised. These forms of violations limit the potential of the person and sometimes leads to death. The traditional leaders therefore have to play a role in protecting all the vulnerable groups against such violations. The society also has the responsibility to demand for protection of human rights from the state.

3.3 Human Rights Violations

Despite the broad protection that the constitution and international instruments offer for individuals and groups in Zambia, the adequate enjoyment of all classes of rights remains a teasing elusion for citizens. This is due to the following reasons:

- i) Legal frameworks: The Zambian constitution only contains civil and political rights and does not have economic social and cultural rights. Further, the scope of the civil and political rights protected is still limited since some of the clauses take away the full enjoyment of the right. For example the right to life

can be taken through the death penalty, freedom of association can only be enjoyed through a polite permit. The fact that international instruments have not been domesticated also creates a challenge the effective use of the instruments.

- ii) Lack of awareness of rights and duties of the state by citizens, government official and even traditional leaders. The lack of awareness entails ignorance and hence disempowerment of citizens.
- iii) Poverty minimises the economic opportunities of the community members and leads to discrimination and marginalisation.
- iv) Prejudice, misplaced cultural beliefs and traditional norms. These cause human rights violations to occur in the form of violence against vulnerable groups such as women, disabled persons, sexual minorities and children. This is because certain cultural beliefs and prejudices make society believe that these groups are subordinate, inferior or less human hence the mistreatment.

As most of the vulnerable groups live in communities that traditional leaders oversee, it is important that the institution of traditional leadership plays a role in protecting their rights.

3.3.1 Definition of Human Rights Violation

A human rights violation is an unlawful deprivation of individual rights considered inherent to all humans. A human rights violation is a situation where a person's right are denied, or not respected or fulfilled. If a community is not given an opportunity to take part in the decision making process of an issue that affects them, that situation then amounts to a violation of the rights of the members of the community. Human rights violations further leads to discrimination which further leads to marginalisation of the vulnerable groups. The earlier example where a homosexual person is denied medical treatment depicts violation of human rights whereby the right to health has been violated.

3.4 The most vulnerable persons or groups to human rights violations

Most of the violations occur because social economic, cultural or political environments that are negative to the vulnerable marginalised groups. The most vulnerable groups to human rights violation in Zambia are those that are weak, poor and unable to protect themselves or voice out their opinions.

The most vulnerable and marginalised groups in Zambia are;

- i. Women: Traditionally women are disadvantaged due to social and cultural beliefs about their position in society or the community. Most cultures put women at a lower status than men and therefore restrict their access to participation and power. This social and cultural belief and treatment of women results into discrimination against women. The discrimination therefore amounts to human rights violation.
- ii. Children: Children are usually weak, vulnerable and unaware of their rights. They are also very dependent at both economic and social levels. Girl children are particularly the most vulnerable as they are even denied education or sent off to early marriages. This makes them illiterate, unaware of their rights, economically dependent on men. The trickle effect is when they grow up they would not be able to own land and their lack of education has a negative impact on the health and education of their children, affecting the enjoyment of the rights by their children.
- iii. LGBTI: These group is among the most vulnerable in society. This is because they are frowned upon at political, economic, social, cultural, religion and civil levels. Basically they are hated and ridiculed hence discriminated at all the levels that human rights are supposed to be enjoyed.

3.5 Root causes of human rights violations

- a) Ignorance: There is lack of knowledge and better understanding of the basic concepts of human rights. Human rights is a concept that is usually used without a lot of understanding of how it is relevant to people's daily lives, at all levels of society. This therefore makes it difficult to understand the impact of human rights violations on the individual as well as the community at large.
- b) Prejudice: There are deeply embedded cultural and traditional beliefs that have been used as a basis for human rights violations for vulnerable groups. For example for LGBTI people it has been mentioned that they are un-Zambia and Un- African. Issues of sexual orientation and gender identity are seen as a cultural taboo. With the emphasis of human rights protection, it might be easier to discuss issues of sexual orientation and gender identity and ensure protection of these groups. Cultural, religious and traditional beliefs have been used as a basis for human rights violations for vulnerable groups. These result in discrimination of certain groups in the community.
- c) Legal landscape: Zambia has ratified a number of international and regional instruments on human rights. However, there are national instruments that fuel discrimination and criminalisation of other vulnerable groups. The contradiction between the international, regional and national legislations and policies makes it difficult for the community members to protect human rights for all.
- d) Vulnerability and marginalization: There are groups of people that are denied access to basic needs leading them to be more vulnerable to human rights abuses. There are entrenched social practices that increase the vulnerability for these groups. For example, women have been identified as the minority which has led to their marginalisation in a number of issues such as land ownership. This marginalisation increases their vulnerability to human rights violations such as land grabbing after the death of the spouse. There are some economic disparities and power imbalances that affect their ability to claim human rights. This leads to lesser appreciation of the principles of human rights such as equality and non-discrimination.

3.6 Impact of human rights violation

Human Rights violations have negative consequences at three levels; individual, community and national level.

3.6.1. Impact on Individuals

Human rights violations impact negatively on the individual in different ways. The effects of the violations include:

- i) Dehumanising: Violations reduce human beings to levels that are less human. For example torture and other degrading treatment of sexual minorities and women through gender based violence and situations where the human worth is reduced. Individuals who suffer this violations usually feel less human and this often leads to low self-esteem, self-worth and even suicide.
- ii) Loss of Dignity: This is a consequence of human rights violations that follows from dehumanising treatment. This is when the individual is not seen as human and hence not treated like one. Traditional punishment such as cuttings and even killing are examples of stripping a person's dignity. Sexual cleansing and mutilations are other examples.
- iii) Weakening of potential: Some violations take away human potential to develop. For example early child marriage takes away the girl child's potential and ability to grow into a normal adult, to get to school and use their intellectual ability, to have an opportunity for a life and even earn an income adequate for a good standard of living.

3.6.2 Impact on the community

Because individuals are part of the community, human rights violations on an individual therefore impact on the community in a negative way. The effects on the community include the following:

- i) **Limits individual participation:** Most human rights violations limit the individual's ability to participate in the life of the community. The net effect is that the community loses contributions that would have been made to develop the community. This limitation of individuals' ability to participate is a root cause of other impacts such as lack of development of the community and the loss of peace in the community due to segregation.
- ii) **Low development:** When individuals are unable to participate effectively in the activities of the community, the community cannot develop and hence remains in poverty. The lack of community participation also creates a lack of leadership and direction.
- iii) **Division in the community:** This occurs when certain groups or individuals are treated with discrimination. Such divisions affect the ability of the community to develop and to be governable. Divisions cause more traditional disputes such as land ownership disputes which results in hatred. Hence when death or illness occurs suspicions develop as to who is responsible. The net effect is that the community cannot develop.

3.6.3 Impact at national level

The impact of human rights violations at national level is the net effect of impacts at individual and community level. All the impacts come into play to create a divided society that is unable to develop socially, culturally, economically and politically. Some of the manifestations of these impacts are violent protests, low economic growth, static legal systems and poor political engagements.

3.7 The role of traditional leaders in protecting human rights

The protection of human rights for vulnerable groups is a duty and role of everyone and most especially traditional leaders. Traditional leaders should step up to ensure that their communities are sensitized in human rights and perform the following roles ensure that the rights of vulnerable members of their communities are protected.

- 3.7.1 **Community participation:** Traditional leaders have to facilitate and ensure community participation. Community participation means the full and equal involvement of all the members of a community in the decision making process of the community. Community participation is important because it makes sure that each and every individual is taken into account, that their voices and concerns are heard and it also helps prevent discrimination. In this sense it helps avoid human rights violations. Therefore as traditional leaders have a role to ensure community participation of their subjects.
- 3.7.2 **Ensure customary law does not violate human rights:** Traditional leaders are the custodians of customary law and have to ensure that when customary law or practice is being applied it does not cause human rights violations. For example traditional leaders should ensure that customary law does not cause a homosexual or transgender person to be tortured or in any way mistreated through traditional rituals in the name of casting out evil spirits. Traditional leaders can also ensure protection from imprisonment of the LGBTI people.

- 3.7.3 **Medium between government and the people:** Because of their important traditional and leadership role in communities in Zambia, traditional leaders are a medium between the government and the people. Traditional leaders are on the front and know the needs of the people better. For this reason traditional leaders can best present the needs of their people to the government through the area members of parliament or district commissions. In this sense traditional leaders are said to be helping in the “fulfilment” of the peoples’ human rights. For example when a clinic is built through as a result of this role, the traditional leader would have caused a fulfilment of the right to health.
- 3.7.4. **Work with Civil Society:** One of the roles of traditional leaders in promoting and protecting human rights is to engage and corporate with civil society organisation that work in their communities. This ensures that members of their communities are made aware of their rights, about what the state is supposed to do for them and about what they can do and generally about human rights violation and its impact. For example through working with Panos Institute Southern Africa, traditional leaders will be made aware of their important role in human rights and in turn the members of their community will learn about discrimination, human rights violation and its impact.

Existing opportunities for protecting human rights

Traditional leaders have a special and strategic role to play in the protection of human rights for their subjects. As already stated, one of the reasons for this is because they are closer to the people and hence are able to address the root causes and impacts of human rights abuses. As leaders, traditional leaders can engage with the different opportunities that exist and use them to help protect the rights of their subjects. In addressing human rights abuses and protecting human rights, there are several opportunities from that the traditional leaders can use. For example:

- i. Ignorance and lack of knowledge on human rights: It is important to improve education and advocacy on the basic concepts of human rights. Education and awareness can also be imparted using different platforms such as the community radio stations.
- ii. Prejudice: Awareness creation on the principles of equality and non-discrimination is vital for community members to be aware of the policy framework in the country that is meant to ensure respect of human rights.
- iii. Legal landscape: There are different human rights instruments from the national, regional and international level which are a guidance on how to protect human rights. The legal landscape can also be addressed through the courts at the national level.
- iv. Vulnerability and marginalization: Awareness and continuous sensitisations through collaborations with the civil society organisations, human rights defenders and government departments as the best strategies. There is need to use other avenues and platforms available at the community level such as community meetings and community radio as a strategy for better advocacy.

These opportunities exist at many levels and are open to traditional leaders for strategic use. The opportunities are policy as well as structural based and they exist at National, Provincial, District and Community levels. These opportunities cannot be explained in great detail but their sufficient nature has been explained below. These are:

4.1. Human rights policies and structures in Zambia

Human rights policies and structures in Zambia exist to ensure that human rights are protected, promoted and fulfilled.

4.1.1. Policy Framework

At policy level, there are many policies that have human rights implications. It must be noted that policies are made at national level by the government but implemented to ensure that individual at community levels benefit. The policies are too numerous to mention but it must be noted that all policies according to the constitution are made to fulfil the government's human rights obligations. For example:

- i. The National HIV and AIDS policy on access to health and medication. This policy exists to protect and promote the right to health. The policy even recognises that the sexual minorities such as LGBTI persons should have access to health care services.

- ii. The Legal Aid policy: The policy is meant to ensure that everyone has access to justice and equal protection before the law. Through policy the legal Aid board Act was made by parliament and the legal Aid board was created. Hence any people who are poor and have been discriminated against because of being a woman or disabled person can seek the services of the legal Aid board.
- iii. The Citizens Economic Empowerment Commission: This policy is set to empower poor citizens by providing capital for to start business. In this regard the vulnerable groups that have little if no access to employment such as disabled persons can benefit from this policy by applying for loans.

With all the policies, it is still possible that the vulnerable groups can be discriminated against and denied access to the services. Traditional leaders play the intermediary role to ensure that application of national policies does not discriminate against their subjects and are implemented fairly and without discrimination for vulnerable members of their communities.

4.2. Structural Framework

At the structural level there are different institutions that exist at the community, provincial and national levels.

4.2.1 The Community level

- i. The Victims Support Unit - These are based at the community police stations or posts are a good example of human rights protection structure. Traditionally they were known only to support victims of domestic violence but they actually exist to support all victims of abuse both male and female.
- ii. The customary courts. These are also a community based structure that can be used to protect human rights. These courts must always ensure that human rights are protected in the application of customary law.
- iii. Community based human rights committees. These are another a very strategic grass roots solution to human rights promotion and protection. These committees, though not structurally provided for under customary law, can be created under the traditional leaders' jurisdiction and can work with civil society organisations to foster human rights awareness in the community.

The lack of awareness on human rights has crippled the creation and existence of community based human rights committees.

4.2.2 Provincial Level

At this level, the different government departments are relevant offices for human rights protection.

- i. The Provincial Minister and the District Commissioner. These provincial offices are important offices that traditional leaders can call upon to ensure the fulfilment of the rights of their subjects by the government. It is only through the district and then the provincial government departments that communities have their voice heard.
- ii. Magistrate Courts. These courts play a very important role by enforcing the national law. For example members of a community who feel that their rights have been violated by the application of a customary

law can appeal to the magistrate court. In this way the magistrate courts provide a check on the customary courts to ensure that the customary courts do not apply customary law in a manner that violates human rights.

4.2.3 The National Level

- i) The Supreme Court and High Court of Zambia: These are very important institutional structures for the protection of human rights. It is only these two courts that have the power to enforce the rights in the Constitution. The two courts usually take into account the international and regional human rights instruments to interpret the rights in the constitution. Members of a community have the right to go to these courts to seek protection of their constitutional rights. It must be noted that before going to the Supreme Court one must start with the High court to protect their rights.
- ii) The Human Rights Commission of Zambia. The commission is created by the constitution. Its role is to protect human rights by carrying out investigations into violations, carrying out sensitization programmes and awareness. Another role of the commission is to carry out investigations into allegations of human rights violations. The commission is a national body that has offices in different provinces works and can therefore be used by traditional leaders to promote and protect human rights in their communities.

4.3 International, Regional and Domestic instruments for protecting human rights

Even though the primary duty to protect human rights is held by the state, traditional leaders can still use the international, regional and domestic instruments discussed below in a way that ensures protection of their subjects.

The traditional leaders can use these instruments to:

- i) Demand for accountability: The leaders can use the instruments to hold the government accountable on the states obligations with respect to human rights. For instance when engaging the government through the district commissioner on the need for schools, traditional leaders have the platform to state the provision of schools is a duty that the state has in line with the right to education. Similar when demanding for health care posts traditional leaders can hold the state accountable by stating that health services are not only a government policy but that they are also a duty that the state has under the instruments in line with the right to health.
- ii) To inform the national policies: The instruments can be used to guide the deliberations towards a human rights based approach at the house of chiefs at local level. For example when they are discussing particular bills or proposed policies, traditional leaders can be able to make meaningful contributions once they know what human rights standards are known.
- iii) To improve standards of customary courts: The human rights instruments create standards that traditional leaders can use in the customary law to ensure that human rights are upheld and not violated in the customary courts. For example the principles of equality and non-discrimination found in the instruments can be used to protect women, children, sexual minorities, disabled person and other vulnerable and marginalised groups. Similarly the standards can be used at community meeting in the decision making process.

It is easy for traditional leaders to guide their subjects in a progressive manner if they are aware of what human rights are and what instruments exist to protect those rights. This helps build a human rights mind set in the traditional leaders and it is important for the progressive and sustainable development of the community.

4.3.1. International Human rights Instruments

At International level human are provided for and protected by the international bill of rights. The international bill of rights is made up of three very important human rights instruments. These are the universal declaration of human rights, the international covenant on economic social and cultural rights and the international covenant on civil and political rights.

4.3.1.1 The Universal declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights (UDHR) was unanimously adopted by the United Nations General Assembly on 10th December 1948, henceforth human rights day.

The principle of equality is stated under Article 1 of the UDHR. This principle is the foundation for the enjoyment & protection of human rights and the basis of international human rights law. Article one famously states:

“All human beings are born free and equal in dignity and rights”

Article 1 recognises the equality of mankind and the inherent dignity of every individual. It emphasises the fact every person is a right holder and stands at an equal level with every other individual in the enjoyment of rights. It therefore creates the foundation for the principle of non-discrimination. The principle of non-discrimination is recognised under Article 2 of the UDHR as follows: -

“Everyone is entitled to all the rights and freedoms set in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”

Article 7 of the UDHR further elaborates this principle by stating that “everyone” is equal before the law and entitled without any discrimination to equal protection of the law. It goes further to state that “All” are entitled to equal protection against “any discrimination” in violation of this declaration and against any incitement of such discrimination.

Even though the UDHR does not expressly state the non-discrimination of sexual minorities, the UDHR affords protection of all minority & vulnerable groups including sexual minorities. The United Nations general assembly has recognised that the list set in article 2 is not exhaustive. For instance, under resolution 45/187 of 1990 and 46/203 of 1991 the UNGA affirmed that people living with HIV are protected from discrimination under the term “other status.”

4.3.1.2 The International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) is a binding treaty that elaborates and amplifies the civil and political rights in the universal declaration. Zambia became a state party to the ICCPR on the 10th April 1984.

The principle of equality and non-discrimination in the ICCPR starts from the preamble. It recognises that rights are derived from the inherent dignity of the human person. Under Article 2 (1) the ICCPR creates the obligation on all state parties (which includes Zambia) to ensure that every citizen of each country enjoys the rights therein without any discrimination.

It states; -

“Each state party (e.g. Zambia) to the present covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognises in the present covenant, without distraction of any kind, such as race, colour, sex language, religion, political or other opinion, national or social origin, property, birth or other status”

The treaty body that is responsible for ensuring that state parties adhere to the obligations in the covenant is the human rights committee. In interpreting the principle of equality and non-discrimination, the committee passed general comment No. 18 which was discussed earlier. In essence, the general comment discusses the normative content of the right to equality and non-discrimination in general terms.

4.3.1.3 The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic Social and Cultural Rights (ICESCR) like the ICCPR develops and amplifies the corresponding rights in the universal declaration in detail and further specifying the steps required for full realisation of the rights set therein. Zambia became a state party to the ICESCR on 10th April 1984. Despite being a state party for 30 years now, Zambia has not domesticated any of the economic, social and cultural rights set in the ICESCR. This minimises its obligation to fulfil its core obligation to fulfil under the ICESCR without giving the excuse of resource constraints.

The minimum core obligation under the ICESCR is the principle of non-discrimination. That is to say, at the very least, every state party to the ICESCR should afford the enjoyment of the ESCR's without discrimination on any basis. Further that every individual should be treated equally in the enjoyment of rights and before the law. This does not require financial resources to fulfil, and hence is called the minimum core obligation.

The principle and right of non-discrimination is guaranteed under article 2 (2) of the ICESCR. It states:-

“The state parties to the present covenant undertake to guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind such as the race, colour, sex, language, religion or political or other opinion, national or social origin, property, birth or other status.”

The treaty monitoring body of the ICESCR is the committee on Economic Social and Cultural Rights. The committee interprets the various rights in the ICESCR and provides the normative content through general comments.

4.4 Regional Instrument

At regional level, Zambia is a member state of the African Union and a state party to the African Charter on Human and People's Rights (herein after referred to as the African Charter). The African Charter was adopted by the Organisation of African Unity (OAU) now the African Union (AU) in Nairobi Kenya on the 27th June 1981 and entered into force on 21st October 1986. Zambia became a state party to the charter on 10th January 1984.

The African Charter is the principle human rights binding treaty for the protection and promotion of human rights in Africa. Other instruments include the protocol to the charter on the rights of women and the African charter on the rights and welfare of the child. The charter has 26 substantive provisions which create obligations on Zambia and other African member states to respect, protect and fulfil human rights of its citizens. The rights in the charter include, the right to equality and non-discrimination, right to life, dignity of the person, work, health, freedom of expression assembly and association.

Article 2 of the African charter states the principles and right to equality and non-discrimination. It states as follows: -

“Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national or social origin, fortune, birth or other status”

Article 3 spells out the principle of equality in the following terms:

“Every individual shall be equal before the law, every individual shall be entitled to equal protection of the law”

Articles 4 and 5 also fall within the principles of equality and non-discrimination in the sense that they emphasize the dignity of the human being. Article 4 recognises that “human beings are inviolable and every human being shall be entitled to respect for this life and integrity of his person”. Article 5 goes further to state that “every individual shall have the right to the respect of the dignity inherent in a human being and to recognition of his status.”

Clearly the charter recognises that first before anything or any status the citizens of member states are “human beings” and as such their inherent dignity puts them at an equal status with every other person hence no form of discrimination should exist to deny them their rights Articles, 2, 3, 4 and 5 are therefore very crucial for the protection of sexual minorities. Even though sexual minorities are not expressly mentioned, the common implication of the articles is that sexual minorities are recognised as right holders and hence protected.

4.5 Domestic Human Rights Instruments

At domestic or country level human rights are protected by the Constitution and the Bill of Rights.

4.5.1 The Constitution of Zambia

The constitution was enacted at independence in 1964. It has since undergone a number of amendments. In 1976, the constitution was amended and the country saw the birth of a one party state. In 1991, after massive protests and demonstrations, the constitution was again amended, resulting in the re-introduction of multiparty democracy. In 1996, the constitution was again amended, this time with the aim of strengthening the country's democracy.

Despite all the amendments, the current 1996 constitution remains largely the same as the 1964 constitution which was adopted from the British colonial government. Article 11 expresses the right to equality and non-discrimination, stating that:

“It is recognised and declared that every person in Zambia has been and shall continue to be entitled to fundamental rights and freedoms of the individual that is to say, the right, whatever his race, place of origin, political opinion, colour, creed, sex or marital status but subject to the limitations contained in this part.....”

Article 23 (3) says discrimination

“means affording treatment to different persons attributed, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinion, colour, or creed whereby persons of one such description are not made subject or accorded privileges or advantages which are not accorded to persons of another description”

Looking at these two Articles, it is therefore clear that the constitution is still strong in ensuring the principle of equality and non-discrimination.

When the constitutional clauses on discrimination are interpreted in the context of international human rights standards which Zambia is party to, the theoretical position of the constitutional clauses on discrimination does apply. This therefore means that all persons, including the most vulnerable groups can enjoy constitutionally guaranteed rights such as, movement, assembly, expression, speech, life and dignity without fear of prosecution.

The constitution contains the bill of rights which is part number three of the constitution. Basically part three or the bill of rights contains only civil and political rights such as the rights to vote, freedom of movement, association and assembly.

4.5.2 The Bill of Rights

The Bill of Rights contains only civil and political rights leaving out the economic, social and cultural rights as directive principles of state policy. Even though it does not contain economic, social and cultural rights, Zambian citizens are still entitled to these rights due to the fact that Zambia is a signatory to the international and regional instruments. This status of signatory means that Zambia has expressed its willingness to be bound by the standards and obligations in the different human rights instruments.

The lack of economic, social and cultural rights in the Bill of Rights therefore sums up the fact that Zambia is failing in its international and regional obligations. The Bill of Rights has never been amended and hence retains its colonial nature parallel to an oppressive regime. The state of affairs has ensured that human rights development in Zambia has remained an illusion.

Citizens cannot have the benefit of protection offered under international and regional human rights standards only. Therefore these instruments are implemented at a domestic level through policies and structures to guarantee human rights protection for all.

Traditional leaders' action points for protecting human rights

In effectively playing their role in protecting human rights, traditional leaders can take the following action points as a guide:

- 5.1 **Traditional leaders carry out community participation on a regular basis:** This will make certain that each and every member of the community plays a role in the life of the community and thereby ensure that the rights of everyone are taken into account. The benefits of community participation are that human rights are respected and protected at both individual and community level. This ensures that human rights standards are observed from the grassroots. In this vulnerable and marginalised people such as LGBTI persons will not be discriminated against. It is also worth noting that community development cannot occur without community participation.
- 5.2 **Work with civil society organisations and other human rights defenders and stakeholders:** Working with civil society will ensure that traditional leaders and their communities have effective support for human rights development in their communities. For instance civil society organisations will help communities make effective use of the different human rights related laws, policies and structures that exist in Zambia. For example civil society such as PSAf will help provide material that will show the importance of not discriminating against any one in the community. In this light civil society should be seen as partners in human rights development by traditional leaders.
- 5.3 **Create structures at community level for human rights awareness programmes:** In order for human rights protection to be effective at community level, there need to create community structures that will guarantee protection for all. For instance community human rights committees can be created that make certain that human rights standards are observed in the community. The traditional leaders under their customary law jurisdiction to ensure that the application of customary law and practices does not violate the rights of the members of the community can mandate these committees. The said committees can also be the focal points with civil society to organise community human rights trainings and awareness programs.
- 5.4 **Ensure that customary law and practice does not violate human rights:** The traditional leaders have to ensure that customary law does not violate human rights. To this end traditional leaders need to deliberately have a human rights based approach in the application of customary law. This means that in deciding cases or issues at the traditional courts, the rights of the individuals will be taken into account above the custom in question. In this way discrimination that occurs due to long standing cultural beliefs and practices will be avoided.
- 5.5 **Engage closely with the government to ensure the protection of the rights of its members:** The government is the primary duty bearer when it comes to human rights. It is the one that is supposed ensure that the different international and regional human rights instruments are domesticated into law or put into policies. To this end, traditional leaders should ensure that they work very closely with the government or the different government agencies. Engaging with government means for example that

traditional leaders will call upon the relevant department to put up a hospital or clinic thereby fulfilling the right to health, or a school thereby fulfilling the right to education. This is important because traditional leaders are closer to the people and hence understand their needs more than the government. In this regard traditional leaders can be said to be agent of their subjects.

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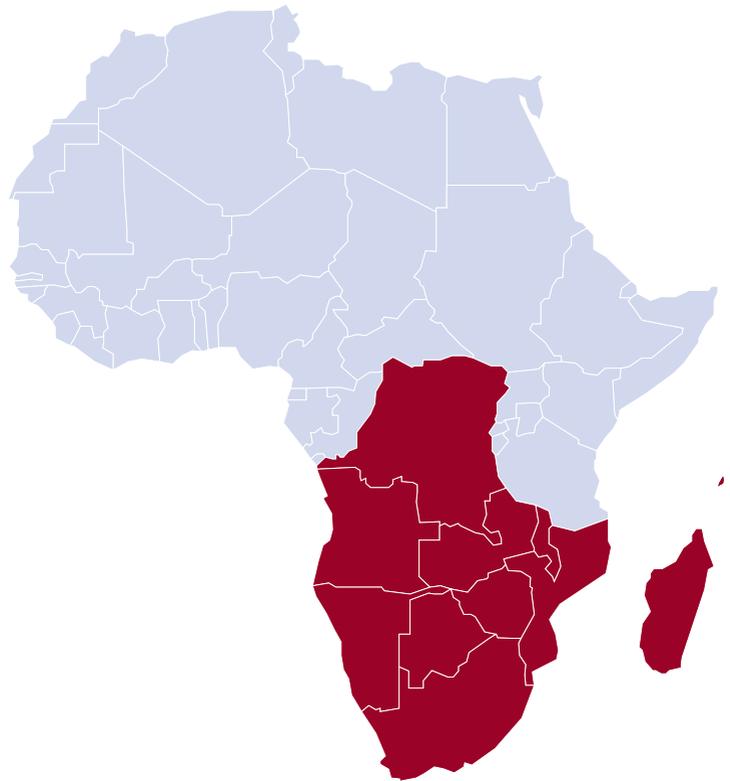
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