

**GAY RIGHTS: DO THEY HAVE A PLACE IN THE
ZAMBIAN LEGAL SYSTEM ?**

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**Being a Paper Submitted in Partial Fulfilment of the Examination
Requirements for the Degree of Bachelor of Laws of the
University of Zambia.**

UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

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GAY RIGHTS: DO THEY HAVE A PLACE UNDER THE ZAMBIAN LEGAL SYSTEM?

BE ACCEPTED FOR EXAMINATION. I HAVE CHECKED IT CAREFULLY AND I AM SATISFIED THAT IT FULFILLS THE REQUIREMENTS RELATING TO THE FORMAT AS LAID DOWN IN THE REGULATIONS GOVERNING DIRECTED RESEARCH.

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Dedication

This paper is dedicated to my father Aaron Lungu, and my mother Rhoda Lungu, whose love and sacrifices have accorded me a chance to get an education.

This paper is also dedicated to my family members, Martha, Chimika, and Komani, who have always believed in me.

(ii)

Acknowledgements

I would like to thank God who is with me in all my endeavours and makes all things possible for me.

Special thanks to my supervisor Dr. A. W. Chanda, for his guidance and patience in ensuring that this work met the required standard.

Many thanks to Dingani Banda for his wonderful computer skills which made this work easier, and for his love, friendship, and endless encouragement, and who also worked as a team with me on this paper.

Thanks also to my friends Milimo Moyo, Celine Nair, Febby Kabonde, and Syreeta Mulongoti for their fruitful contributions to this work.

I remain truly indebted to all the institutions and centres that provided me with information to make this work possible.

(iii)

PREFACE

The Directed Research Project I have undertaken addresses the issue of whether gay rights fall under the ambit of human rights protection. It looks at the evolution of the concept of gay rights and how these rights have been recognised in other jurisdictions.

Of great concern in this paper is the controversy of the Zambian sodomy laws which do not conform to internationally set standards for the protection of gay persons under the concept of human rights.

Finally, the paper looks at how the Zambian law can be reconciled to these internationally set standards.

INTRODUCTION

Today, as much as we might try to ignore it, there exists a group of people with a sexual orientation, which many see as being different from the rest of the community. These people are termed homosexuals if male, and lesbians if women. The determining aspect of the classification of this group of people is that they prefer to have sexual relationships with people of the same sex.

These people are very much a part of every community and sometimes, not knowing of them to be of such a nature, we work with them, go to school with them, sit on buses with them, play games with them and even elect them into important offices, be it public or private. In other circumstances, we might be aware of the sexual orientation of these people and simply choose to ignore it. As one Gordon Westwood stated in his book,

“some people would prefer to consider a problem to be solved by not recognising it as a problem. This is especially true when the facts are unpalatable. Although we now live in a frank and realistic age, most people prefer to ignore the problem of homosexuality within our society. To many people, it is no more than a subject of innuendoes and cheap sneers. If there is a more serious side to the problem, these people do not seem to be aware of it.”¹

¹ Gordon Westwood, Society and Homosexuality, Victor Gollanz Limited London, 1952. p.19.

What is of great concern in this paper is the general reaction of society not only in Zambia but even the world over, whereby upon discovery of their sexual orientation, homosexuals and lesbians are shunned, condemned and insulted, but mostly suffer discrimination and other forms of ill treatments.

Activists of gay rights have branded the discrimination suffered by homosexuals and lesbians as being inconsistent with the principles of human rights. There is, however, a controversy looming over rights if any, of gay persons as different persons and analysts argue against gay rights activists, stating that such notion of rights is not intended for protection under the human rights umbrella. This controversy has already been experienced even in organisations whose main concern is the protection of human rights and as such should already have a guide as to what falls under human rights protection. An example of such an organisation is Amnesty.

“ For many years the issue was debated, whether Amnesty should work for the release of persons imprisoned or detained for their homosexual identity or orientation or for homosexual acts committed in private and between consenting adults. This issue even threatened to split up the organisation along multicultural lines. While members in Western Europe and North America tended to consider it rather obvious that Amnesty should work for such persons, many people in Asia and Africa as well as some Latin American countries thought otherwise.”²

² Michael Schofield, Sociological Aspects of Homosexuality, Longman's Green & Company Limited London, 1965.p.11.

Since the controversy surrounding gay rights is present today even in Zambia, it is the aim of this study to highlight basic and underlying concepts of gay rights education, the origins and legal basis, and, whether these rights can have a place in the Zambian legal system.

The study is divided into five chapters:

Chapter One focuses on what gay rights are, through an insight into the history and legal basis of gay rights.

Chapter Two looks at the European system of protection of gay rights and the African system of protection of gay rights.

Chapter Three elaborates the Zambian situation concerning homosexuality and lesbianism.

Chapter Four looks at the effect of international laws protecting human rights on Zambia's sodomy laws and whether there is a need for Zambia to reconcile its sodomy laws with international law standards to accommodate gay rights.

Chapter Five offers a summary of the entire essay and gives recommendations on how to resolve the controversy surrounding gay rights activities in Zambia today.

CHAPTER ONE

GAY RIGHTS

- (i) Homosexuality
- (ii) History of Gay Rights
- (iii) Legal Basis
- (iv) Conclusion

CHAPTER ONE

GAY RIGHTS

This Chapter discusses the origin of the Gay Rights struggle and its legal basis

i) **HOMOSEXUALITY**

Gay rights have their origin in homosexual or lesbian activities. The expression "homosexuality" in this study will be used to refer to both men and women. A homosexual is " anyone who engages in sexual acts with another of his or her own sex."¹ The term homosexuality has thus been used to describe a particular social behaviour in which persons of such a nature prefer to enter into sexual relations with those of the same sex.

Others have defined homosexuality from the psychological perspective as " not a type of conduct, but a condition characterised by a psychosexual propensity towards others of the same sex."²

The underlying aspect with persons termed as homosexuals is that they prefer to have sexual relations with persons of their own sex.

¹ Altman D. Homosexuals; Oppression & Liberation Allen Lane Publishers, London, 1974. p.5.

² Schofield M, Sociological Aspects of Homosexuality Longman's Green & Company Limited, London, 1965. p.11.

Being a homosexual and knowledge of others as being homosexuals arouses many different reactions in different people. For some, being gay is a marker of social and moral decay. Usually and for this reason, gay persons have been sidelined and left out of the ambit of human rights protection. “ The labeling of gays as sexually degenerate and unnatural is the same kind of labeling that has been used to justify the denial of rights to individuals belonging to minority communities.”³

There thus exists in many countries, laws that actually criminalise homosexual activities. These laws are generally known as ‘sodomy laws’. But gay rights activists argue against such laws as being out of line with human rights principles.

ii) **HISTORY OF GAY RIGHTS AND THEIR LEGAL BASIS**

Much of the impetus for the development of international human rights law as it exists today emerged in reaction to the atrocities committed during the Second World War. Like Jews, Gypsies, and the disabled, the Nazis targeted lesbians and homosexuals for extermination. As many as one hundred thousand men were identified as homosexuals and transported to concentration camps. Wearing the pink triangle (since adopted as the international symbol of the gay rights movement), these men were among the millions shot, hang, gassed, worked or starved to death in the camps. Several thousand lesbians met the same fate. Identified not as homosexuals but as ‘anti social elements’, lesbians wore the

³ Peterson H, Created Equal; Why Gay Rights Matter to America, St Martins Press New York, 1994. P.. 26.

black triangle and lived, laboured, starved and died alongside vagrants and petty criminals who had received the same classification.

After the war, the liberating powers kept the fate of homosexuals hidden. After all, the homosexuals were criminals and homosexuality was still a criminal offence in the United States, Britain and the then Soviet Russia and generally the rest of the world. Homosexuality among adults was not decriminalised in West Germany until 1969. After the war, homosexuals were omitted from memorials erected to the victims of Nazism and there was no financial compensation for homosexual victims as was extended to all the others persecuted on grounds of race or conscience. The group in Germany called Rosawinkel campaigned for lesbian and gay concentration camp survivors. In 1982, the West Germany government agreed to their demands.⁴

Similar abuses were going on around the world. There was a clear shunning and ill treatment of those known or suspected to be homosexuals.

Despite this clear indication of their particular vulnerability to human rights abuses, gay men and lesbians were not specifically included in the framework for international human rights protection when the United Nations drew up the Universal Declaration on Human Rights, UDHR, after the end of the war. Did

⁴ Clapman A & Waaldijk L. Homosexuality; A European Community Issue Kluwer Academic Publishers, Netherlands, 1993. p. 2.

this therefore mean that homosexuals were meant to be excluded from the framework of human rights and how they are to be applied?

This is where gay rights activists came in and made radical approaches to ensure that human rights protection applies equally even to homosexuals. Their call is based on the interpretation and understanding of what human rights are.

Human rights can be defined as the “inherent and inalienable rights that are due to man simply because of being human.”⁵

Others have stated that human rights are “rights of all individuals.”⁶

To call them human implies that all human beings have them “equally and in equal measure by virtue of their humanity regardless of sex, race, age, regardless of high or low birth, social class, origin and ethnic or tribal affiliation.”⁷

By the very fact that human rights are universal and should apply equally, gay rights advocate for homosexuals to also be included in the ambit of human rights protection. “If all human beings have them simply because they are human, human rights are held equally by all. And because being human cannot be denounced, lost, or forfeited, human rights are inalienable.”⁸

⁵ Levin L. Human Rights; Answers and Questions United Nations Publications, Paris, 1981.p.11.

⁶ Lovis H. The Age of Rights Columbia University Press, New York, 1990.p.2.

⁷ Ibid.

⁸ Donnelly J. International Human Rights 2nd Edition, Westview Press, Colorado, USA, 1998.p.8.

It may be asked, what exactly are gay rights advocating for?

Outwardly, it is evident that homosexuals face ill treatment merely by virtue of their sexual orientation. There are many crimes that have been committed against gays stemming from a homophobic attitude towards them generally by the rest of society. This homophobic attitude is one of such intense hatred towards homosexuals such that when confronted homosexuals are beaten (the term normally used here is gay bashing), ridiculed, and even killed. In some societies, there is however no legal protection for the homosexuals. This is especially true in countries where sodomy laws exist.

A homosexual appealing to the law for protection against violent homophobic attackers would instead end up being arrested for sodomy activities. Such arrests occur even when the accused has actually not been caught in the act. This was what had happened in the American case of *Bowers V Hardwick*⁹, where one evening in 1982, a policeman entered the home of Mr. Hardwick, under a warrant for drinking in public. The officer found him engaged in homosexual conduct and immediately arrested him for sodomy acts.

In other societies, sodomy laws might however not exist, but the general outcry against homosexuals by the rest of society instills feelings of self worthlessness in homosexuals such that they opt to remain silent over the atrocities being committed against them, even where the legal system can protect them. “ Silence

makes it difficult for concerned human rights agencies to monitor abuses or to take action on the part of the victims.”¹⁰

It is this vulnerability to human rights abuses and even the lack of extension of the human rights concept towards homosexuals that has urged gay rights activists to face the challenge of speaking for homosexuals and making the rest of the community realise that homosexuals are also entitled to human rights protection.

The gay rights struggle is not about sex. “ It is about privacy, individuality, and civil equality...,and yes, that freedom must include the freedom to express one’s own desire for sexual intimacy, homosexual or heterosexual.”¹¹

“Homosexuals do not seek to be homosexual. This ‘right’ is not one within the authority of any government to give. Homosexuals are neither seeking new or special rights, but merely the extension of existing rights.”¹²

iii) **The Legal Basis**

The struggle for gay rights has its basis in international law. Sexual orientation is not explicitly mentioned in any international instrument. In the United Nations Charter, protection against discrimination is agreed upon in four specific areas:

⁹Supreme Courts of the USA, 1986, 478 US, 186 106 S.CT.2841.

¹⁰ Dunton C & Palmberg M, Human Rights and Homosexuality in Southern Africa; Breaking the Silence, Current African Issues, Volume 19, 1996.p.10.

¹¹ Supra Note 3 at p.4.

race, sex (gender), language and religion. This is a closed list of rights. The enumeration of grounds of protection against discrimination in this agreement is however not exhaustive. Peter Nobel, Sweden's first ombudsman against discrimination in international law summarises, " It can clearly be argued and there is very little doubt about it among leading human rights experts that individuals with a sexual orientation other than the majority are included and they shall be protected from discrimination."¹³

Furthermore, a 1994 decision by the United Nations Human Rights Committee in the case of *Nicholas Toonen V Australia*¹⁴ held that 'sex' in a list of protected categories in the International Covenant of Civil and Political Rights should be understood to include 'sexual orientation'.

The back- bone to the claim for gay rights stems from the Universal Declaration on Human Rights, (UDHR), just like the general recognition of the human rights concept.

The Chairperson of the Commission and the Drafting Committee on the Universal Declaration on Human Rights was Mrs. Eleanor Roosevelt. She stated in the

¹² Ibid, p.27.

¹³ May 1996, Written Communication .

¹⁴ Communication No. 488/1992, Human Rights Committee, Views of the Committee, March 31, 1994.

General Assembly that the Declaration was “ first and foremost a declaration of the basic principles to serve as a common standard of all nations.”¹⁵

The UDHR was not “ a treaty or international agreement and did not impose legal obligations.”¹⁶ This however does not in any way impair the importance of the UDHR. It provides a framework from which clearly identified rights can be drawn out as being fundamental human rights. “ In the world outside the United Nations, the influence of the UDHR has been no less profound. It has inspired more than forty state constitutions, together with regional human rights treaties of Europe, Africa and the Americas, and examples of legislation quoting or reproducing provisions of the Declaration can be found in all continents.”¹⁷

To strengthen the process of human rights protection, it was imperative for the United Nations, through its Commission on Human Rights, to draft two important documents, the International Covenant on Civil and Political Rights, (ICCPR), and the International Covenant on Economic Social and Cultural Rights, (ICESCR). The two covenants interpret provisions of the UDHR in binding treaties upon state parties. Today, the importance of both these covenants has been recognised world wide as forming a legal basis and standard for respecting and upholding human rights as many nations have ratified the covenants and become state parties to the same. There are of course many other treaties which

¹⁵ Merrills JG & Robertson AH. Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights, Manchester University Press, 1996.p. 28.

¹⁶ Esejoiter G. Protection of Human Rights Under the Law, Butterworths London, 1967.p.86.

¹⁷ Supra Note 15 at p.29.

have been drawn up for the protection of human rights, especially those prohibiting systematic discrimination of different forms, such as the International Covenant on the Elimination of All Forms of Racial Discrimination and the International Covenant on the Elimination of All Forms of Discrimination Against Women.

For purposes of advancing gay rights, activists have broadly relied upon provisions under the ICCPR. The case of *Nicholas Toonen V Australia*¹⁸ shall show how gay rights activists have relied on the ICCPR to justify the existence of gay rights.

Toonen brought the complaint before the Human Rights Committee where he was challenging certain provisions of the Tasmanian Criminal Code (Australia being internationally responsible for acts of a component state within its federal structure) which made criminal various forms of sexual conduct between men, including all forms of sexual contacts between consenting adult homosexual men in private. Toonen in particular claimed that the legislation prohibiting homosexuality violated his rights as protected and provided for in Articles 2(1), 17 and 26 of the ICCPR.

Article 2(1) states that, “ each state party to the present covenant undertakes to respect and to ensure to all individuals within its territory and jurisdiction the rights recognised in the present covenant, without distinction of any kind, such as

¹⁸ Communication No. 488/1992, Human Rights Committee, Views of the Committee, March 31, 1994.

race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.”

In its comments on article 2(1), the Committee confined itself to “ noting, however, that in its view, the reference to ‘sex’ is to be taken as including sexual orientation.”¹⁹

Gay rights activists thus claim on the basis of this principle that gay rights fall within the ambit of those to be protected as human rights.

Article 17 of ICCPR guarantees the right to privacy. It provides that no one shall be subjected “ to arbitrary or unlawful interference with his privacy.”

Since most sexual acts, whether homosexual or heterosexual, are done in private, the contention is that homosexuals should be left uninterfered in their sexual conduct as long as this is done in private. Privacy will thus typically protect behaviour “ frequently considered deviant, which the state or other public authorities are called upon to tolerate on the principle that obnoxious as it may be it should not be the subject of public regulation because it is private or takes place in private.”²⁰

¹⁹ Supra Note 15 at p. 548.

²⁰ Supra Note 4 at p. 25.

There are however limitations to the right of privacy as were noted by the Committee. The most important as regards homosexual activity is that the act must be between consenting adults. Further that interference of privacy should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the circumstances.

The Human Rights Committee decided finally that no weight should be given to the fact that for the previous ten years, the law against homosexual activity had not actually been enforced in Tasmania. It decided that the disputed legislation was incompatible with articles 17 and 2(1) of the ICCPR, and that the statute be repealed.

The Committee could not accept either that “ for the purposes of article 17, of the Covenant, moral issues are exclusively a matter of domestic concern as this would open the door to withdrawing from the Committee’s scrutiny a potentially large number of statutes that interfere with privacy.”²¹

Article 26 of the ICCPR provides that all persons “ are equal before the law and are entitled without any discrimination to the equal protection of the law.”

For gay activists, this therefore means that even homosexuals are to find protection in the law where violations or abuses against them occur.

²¹ Ibid.

iv) **CONCLUSION**

This chapter has generally discussed how gay rights have now been found as a concern of international law by bringing such rights to be measured according to international standards, especially through the provisions of the ICCPR.

It should be noted however, that what has been discussed is the general application and argument of gay rights activists. Such rights apply differently in different regions of the world (if at all). The varying application will be considered in the following chapter.

CHAPTER TWO

HOMOSEXUALITY IN EUROPE AND AFRICA

- (i) Legal Position of Homosexuality in Europe
- (ii) Legal Position of Homosexuality in Africa
- (iii) Conclusion

The ECHR stemmed from " an idea of an organisation limited to European frontiers, conceived in the 1940s, which was based on the idea of a common history and heritage."²

The ECHR was signed on 4th November, 1950 and came into force on 3rd September, 1953.

The Convention lays down certain minimum international standards of protection of human rights.

"They are not seeking to identify the most appropriate way to protect human rights , recognising the diversity in the contracting states. They identify at most the minimum which a particular legal system should attain."³

The important organs of the Convention in facilitating its aims and principles are the European Commission and the European Court on Human Rights.

Individuals who are, or were at the decisive moment of formation of the Convention, under the jurisdiction of any of the State Parties to the Convention have the right to file complaints against these States with the Commission in Strasbourg if they are of the opinion that any of the rights under the Convention have been violated by that particular State through its legislation, its administration or a decision of its own courts. The main pre-conditions to making the complaint are that the State against whom the complaint has been made must be a State Party to the Convention and recognises the competence of the Commission to receive complaints, and that any remedies which the legal system of the State concerned provides must have been exhausted in vain, unless the available remedy would cause an undue delay or would clearly not be effective.

² From Human Rights to Human Wrongs-Journal 2,Part VI, 3rd All-Africa Human Rights Moot Competition, 1-6 September 1997, Kampala, Uganda, p. 43.

³ Reid K. A Practitioner's Guide to the European Convention of Human Rights, Sweet & Maxwell,1998. p.31.

CHAPTER TWO

HOMOSEXUALITY IN EUROPE AND AFRICA

This chapter will discuss the contrasting legal status of homosexuality in Europe and Africa.

i) LEGAL POSITION OF HOMOSEXUALITY IN EUROPE

Legality of homosexuality in Europe is an issue which has undergone stages of denunciation and persecution before finally being accepted and protected by the law.

In the huge diversity of peoples who make up the human race, there are a number of universal constants which have always been part of the human condition. One is that people who are different inspire fear which often leads to prejudice; another is that a proportion of the human race is homosexual. In Europe, homosexuality has almost invariably met with prejudice. In its most extreme manifestation-the degradation and slaughter of countless homosexuals wearing pink and or black triangles in the Nazi concentration camps of the 1930s and 1940s-prejudice against homosexuals demonstrates how bigotry and irrational hatred can so warp the human mind as to chase from it every scintilla of decency and justice.¹

In the Europe that emerged from those dark days of the Nazi human rights atrocities, great efforts have been made to control prejudice and the injustice which it engenders. Among the tools fashioned for this purpose has been the creation of a legal order, based on the respect for the human rights of individuals and the rule of law, which transcends the traditional barriers such as nationality, language, race, and religion. The framework for this is found in the European Convention on Human Rights and Fundamental Freedoms, (ECHR).

¹Clapman A & Waaldjik K. Homosexuality; A European Community Issue, Kluwer Academic Publishers, 1993. p.3.

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³ Reid K. A Practitioner's Guide to the European Convention of Human Rights, Sweet & Maxwell, 1998. p.31.

The right of complaint is open to any alleged victim of the violation of a Convention provision, irrespective even of his or her nationality, provided that he or she was under the jurisdiction of that particular State at the relevant moment.⁴

Article 14 of the Convention provides against discrimination. It provides that, "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, nationality or social origin, association with a national minority, property, birth or other status."

This Article(14) does not contain an autonomous provision prohibiting discrimination. It only prohibits discrimination in relation to the enjoyment of the rights and freedoms set forth in the Convention. In cases of discrimination against homosexuals, it will almost always be possible to make a connection with any of the rights and freedoms laid down in the Convention, in particular, the right to respect for one's private life under Article 8.

" Through the Convention, it has been recognised that the private sexual life is covered by the right to respect for private life in Article 8."⁵ The first paragraph of Article 8 provides that, "everyone has the right to respect for his private and family life, his home and his correspondence."

⁴ Supra Note 1. p. 184

⁵ Ibid,p.193.

The case of *Dudgeon V U.K*⁶ established the important principle that, "private sexual conduct, which is a vital element of an individual's personal sphere, cannot be prohibited merely because it may shock or offend others."⁷

In that case, Dudgeon, a homosexual resident of Northern Ireland, brought proceedings against the United Kingdom based on his complaint against laws of Northern Ireland that made certain homosexual acts between consenting adult males criminal offenses. The Court concluded that Dudgeon had suffered an unjustified interference with his right to respect for his private life by the existence of these laws which prohibited certain sexual practices which are a matter of privacy, and accordingly found a breach by the United Kingdom of Article 8 of the Convention.

In such an intimate aspect of private life, there must exist particularly serious reasons before interference can be justified. The European Court underlined in this context two of the hallmarks of a democratic society: tolerance and broadmindedness.⁸

In *Norris V Ireland*⁹, the European Court in its decision went further and applied the interpretation of the second paragraph of Article 8 which states as follows, " There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of public security, public safety or the economic

⁶ Serial A, No. 45, 4 EHRR, p.149 at p.198.

⁷Supra Note 3.p.259.

⁸Ibid.

The Judge in the High Court found that ' one of the effects of the criminal sanction against homosexual acts is to reinforce the misapprehension and general prejudice of the public and increase the anxiety and guilt feelings of homosexuals leading, on occasions, to depression ...'¹⁰

However, he dismissed the action on technical grounds that the applicant had not actually been arrested for homosexuality and as such had no complaint per se.

The applicant then applied to the Supreme Court of Ireland.

The Supreme Court found the laws complained of to be consistent with the Constitution, since no right of privacy encompassing consensual homosexual activity could be derived from the 'Christian and democratic nature of the Irish State.'¹¹

It observed firstly, that homosexuality 'has been regarded for centuries 'as an offence against nature and a very serious crime,'and secondly, that 'exclusive homosexuality, whether the condition be congenital or acquired, can result in great distress and unhappiness for the individual and can lead to depression, despair and suicide,' and thirdly, that male homosexual conduct resulted in many states in 'all forms of venereal diseases,' which had become a 'significant public health problem' in England.

Mr Norris started proceedings before the European Commission on Human Rights, claiming that the Irish laws constituted a continuing interference with his right to respect for private life under Article 8 of the European Convention.

¹⁰Donnelly J. International Human Rights, Westview Press, Colorado, USA, 1998. p.619.

Two years later, by 6 votes to 5, the Commission expressed its opinion that there had been a violation of Article 8. The case was then referred to the European Court.

In the court's view, the interference by the State through the legislation did not satisfy the conditions of paragraph (2) of Article 8 unless it was 'in accordance with the law, has an aim which is legitimate under this paragraph and is necessary in a democratic society for the aforesaid aim.'¹²

It was common ground that the first two conditions were satisfied. As the Commission pointed out in paragraph 58 of its report, the interference was plainly 'in accordance with the law since it arises from the very existence of the impugned legislation. Neither was it contested that the interference has a legitimate aim, namely the protection of morals.'¹³

It remained to be determined whether the maintenance in force of the impugned legislation was necessary in a democratic society for the aforesaid aim. According to the Court's case law, this would not be so unless, inter alia, the interference in question answers a pressing social need and in particular is proportionate to the legitimate aim pursued.¹⁴

¹¹Ibid.

¹²Supra Note 10. p.620.

¹³ Ibid.

¹⁴ Ibid.

It was not contended before the Commission that there was a large body of opinion in Ireland which was hostile or intolerant towards homosexual acts committed in private between consenting adults. Nor was it argued that Irish society had a special need to be protected from such activity.

In these circumstances, the Commission concluded that;

"the restriction imposed on the applicant under Irish law, by reason of its breadth and absolute character, is disproportionate to the aims sought to be achieved and therefore is not necessary for one of the reasons laid down in Article 8(2) of the Convention."¹⁵

A homosexual applicant under the ECHR can therefore claim to be a victim of a measure through the mere existence of the criminal offence of practicing homosexuality since this has a direct and continuous effect on his life.

However, as to what activities fall within the scope of 'private life', the Commission has yet to directly consider the effect of the United Kingdom definition of 'private' as restricted to acts done in the presence of not more than two adults. The Commission nevertheless established that "a person's sexual life was undoubtedly part of his private life of which it constitutes an important aspect, private life guaranteeing a sphere within which a person can establish relations of different kinds including sexual ones."¹⁶

¹⁵ Supra Note 10. p.621.

¹⁶ Supra Note 3. p.31.

Thus the choice of affirming and assuming one's sexual identity comes within the protection of Article 8.

The cases referred to and the general position of the Convention organs in their decisions was to protect homosexual acts between consenting adults which were done in private. This protection did not and still does not bring within its scope all kinds of homosexual activities.

In the same case of *Dudgeon V U.K.*,¹⁷ the European Court further stated as follows, "measures prohibiting acts with minors under 21 years are found to be justified, and a margin of appreciation is left to contracting States as to appropriate safeguards, including the age of consent, required for the young."¹⁸

Another issue which also does not automatically follow with regard to the general recognition and protection of homosexual private life is the question of a right to family life also as provided in Article 8.

Despite the modern evolution of attitudes, the relationships of gays and lesbians do not, according to the Commission, fall within the scope of the right to family life.

This approach maintains an emphasis on the traditional heterosexual couple as the core of the notion of family, which is becoming increasingly less the norm.

¹⁷ Serial A, No. 45, EHRR.p.149.

¹⁸ Ibid. p.260 .

"The Convention organs have been slowly extending family life to situations where there is de facto family life between heterosexuals outside marriage. However, this has not extended to gays and lesbians with long standing stable relationships, even where there have been children in the household."¹⁹

It is clearly evident that the Convention does not fully answer and settle all issues of interest to homosexuals and human rights. It has left particular issues, for example age of consent to homosexual acts to be guided according to the national legislation and practice of State Parties.

However, the most remarkable or important achievement of the Convention is in line with its principle of reaching a common minimum standard for the protection of human rights which every legal system should try to attain.

In its efforts of providing a minimum standard of protection of human rights, the Convention and through its organs has generally established that criminalisation of homosexual acts is not justified.

"As compared to the era when that legislation was enacted, there is now a better understanding, and in consequence an increased tolerance of homosexual behaviour to the extent that in the great majority of the member States of the Council of Europe, it is no longer considered to be necessary

¹⁹ Supra note 3.p.330.

or appropriate to treat homosexual practices of the kind now in question as in themselves a matter to which the sanctions of the criminal law should be applied."²⁰

This general tolerance and acceptance of homosexual activities in themselves as not being criminal, has given gay rights activists enough encouragement to come out in the open and form organisations and associations standing for and speaking for rights affecting homosexuals.

In the European Community there are thousands of lesbian and gay organisations. "In every member State, one or more lesbian and gay campaign is active. Almost all member States have national lesbian and gay organisations. These organisations may restrict themselves to simply creating a place for lesbians and gays to socialise and be themselves or they may extend to far reaching political influence on society in general."²¹

Recognition is also growing on an international level. In particular, the International Lesbians and Gay Association, (ILGA), acting as a confederation of national and local NGOs, active in all parts of the world, including the European Community, has grown in influence, both amongst lesbians and gay men and with international institutions including the European Community Commission, the European Parliament, the World Health Organisation, Amnesty International, and the Department of Public Information of the United Nations.

²⁰ Supra Note p.187.

²¹ Ibid.

The International Lesbians and Gays Association was founded in Coventry, England in 1978 by 13 lesbian and gay organisations to co-ordinate action in the light of the first direct elections to the European Parliament. In the intervening 14 years, the organisation has grown into a global federation with 410 group members in 60 countries.

Its activities range from stimulating grass-roots action to lobbying the United Nations and other international bodies. Its basic goal is to work for the liberation of lesbians, gay women and gay men from legal, social, cultural and economic discrimination.²²

Generally, in Europe, the tolerant attitude of its people and legal implications put forward by the Convention protecting gay persons in their private lives make it possible for homosexuals to form associations for various events. This diversity among gay organisations is enormous. Each gay person is at least able to fall within one or more groupings or organisation which is most suitable to ones interests.

ii) LEGAL POSITION OF HOMOSEXUALITY IN AFRICA

In Africa, homosexuality is met with a different approach as compared to that in Europe. In Africa, there is a general outcry and dismissal of homosexual practices as not being an African practice. Africans contend that where the practice of homosexuality is exists, it is merely being copied from

²² Supra Note . preface xv.

the western world, and being influenced by westerners who are bringing in the practice to Africa. In the same voice, many African governments have refused to give legal recognition to the notion of gay rights.

Homosexuality under many African governments is treated as a criminal offence with provisions calling for penal sanctions amounting to the imprisoning of the offenders. Since they are treated as criminals, homosexuals in Africa find it difficult to organise themselves and rise against the laws which incriminate them. They have the fear that if they so organise themselves, they shall be arrested under laws which already incriminate them.

According to human rights principles of freedom of expression and equality before the law, the African attitude towards homosexuals is clearly an abrogation of those human rights principles. In spite of the main argument that homosexuality is an imported practice from the western world, the human rights concept has also been adopted from the west. Hence the call to try and bring homosexuality within the ambit of human rights protection as generally recognised by the originators of the concept.

Generally, in many African governments, homosexuals are inhibited by the local laws from freely choosing and developing their sexuality according to their own will. It is, however, not only the local laws which inhibit homosexuals in Africa from carrying on their private lives with the non-interference principle provided under the human rights concept. The general attitude amongst Africans of not talking about sexual issues is another contributing factor. Many Africans feel it is a taboo to talk openly about sexual matters. In the same light, most Africans carry the attitude that

homosexuals do not have to announce their sexuality to the whole world just as the 'normal' individuals do not see the necessity of announcing the same.

One of the most crucial issues concerning the subject of homosexuality in Africa is the fear instilled in many parents and other caring parties of the real reason behind one practising homosexuality. Many Africans are of the opinion that males especially, are lured into homosexual practices for economic reasons. The belief is that just like in female prostitution, males are going into homosexual relationships with westerners or even with fellow Africans due to adverse poverty, in the hope that they will receive money and other gifts in exchange for sex. In fact, the fear is not only a belief but a reality.

In Malawi, female journalists are waging a media war against growing homosexuality in the country's lake resort Mangochi district. This was reported in the *Zambian Post Newspaper* of Monday 15th November, 1999, by Raphael Tenthani who quoted the PANA. In the article, it was reported by the manager of Dzimwe Community Radio, Aretha Kamwendo said that parents in the district were surprised to see their sons bringing home expensive presents. Parents were also later shocked to discover that the young men were getting the presents in exchange for sexual favours from foreign male tourists. " The tourists take advantage of the young men's poverty and illiteracy and woo them into sex. Some of the tourists have actually built houses for these boys."²³

It is such practices connected to homosexuality in Africa which has warranted some African states to silence all calls of gay rights activism in a bid to protect the poor males from being exploited sexually in order to earn a living. In African nations, therefore, the main concern with regard to

homosexuality is not for the homosexuals themselves who in Europe and generally the rest of the western world consider the homosexuals to be the disadvantaged party due to their sexuality where laws exist to restrict or ban their activities. The concern of African governments is that those who are homosexuals are the parties that exploit the poor Africans by giving them gifts in exchange for homosexual practices. This approach probably best explains the different attitudes towards homosexuality and gay rights between Africa and Europe.

The different attitudes of tolerance and acceptance of homosexuality between African governments and European governments could not have been better illustrated by the showdown which occurred at the 50th Commonwealth heads of government meeting in Durban, South Africa, where Zimbabwean President, Robert Mugabe stated that, " Tony Blair has three homosexuals in his Cabinet...If Tony Blair wants to turn Britain into a United Gay Kingdom, that is a matter for him but he should not go round lecturing other countries. People in Zimbabwe are shocked with attitudes towards homosexuals in Britain."²⁴

At the same meeting, British Prime Minister, Tony Blair accused Zimbabwe of having a bad human rights record. President Mugabe before the meeting had been on holiday in Britain where a gay activist Peter Tatchell, had attempted a 'citizen arrest' on him. The London demonstration organised by a group called 'outrage' was in retaliation for Mugabe's alleged persecution of gays in Zimbabwe and other human rights violations.

23 The Post, 15 November 1999. p.20.

24 The Times of Zambia, 15 November 1999, front page.

President Mugabe is not the only African leader to have denounced homosexuals. Echoing a widely held view that homosexuality is a white importation to Africa, Kenyan President, Daniel arap Moi, was quoted in the Mail and Guardian newspaper as saying,

"words like lesbianism and homosexuality do not exist in African languages."²⁵

The former and late Tanzanian President, Julius Nyerere also argued in 1974 in an interview with one Huber Fichte that, "homosexuality is a phenomenon alien to Africa. In Africa therefore, there are no grounds for homosexuals and lesbians to be defended against discrimination."²⁶

Nyerere's comment might be seen as an ill-informed rather than as a crude display of prejudice as the issue of homosexuality at that time was not debated as openly as today.

It is amazingly ironical to note that amidst this clear rebuke and condemnation of homosexuality among the African countries is found a clear voice stating specifically that homosexuals and their rights need to be protected as much as any one else's. This voice is none other than the voice of the Republic of **South Africa**.

Despite being a newly 'ordained' democratic country after the release of Nelson Mandela, and his subsequent victory in the Presidential elections in 1994, South Africa has made a major

²⁵MAIL & GUARDIAN,Johannesburg, September 29, 1995. p3.

²⁶CHRIS DUNTON & MAI PALMBERG, Human Rights and Homosexuality in Southern Africa; Breaking the Silence; Current African Issues Volume.19. p18.

breakthrough, which stands as an example even to the European nations, on the question of homosexuality and how it is treated under the various constitutions of African states and others.

The South African Republic has gone an extra step in making gay rights protection a reality in the country by accomodating them in the constitution.

The South African Bill of Rights is the cornerstone for this protection of gay persons. This Bill of Rights has gone further than what most European constitutions and the ECHR provide which generally only prohibits discrimination on the listed grounds of which sexual orientation has not been specifically mentioned as an area for protection from discrimination.

" There are still no national constitutions in Europe that specifically prohibit discrimination based on sexual orientation. However, many constitutional provisions on non-discrimination or 'equality before the law' are worded in such general terms that sexual orientation may be considered to fall within their scope of protection."²⁷

The South African constitution has specifically provided for prohibition of discrimination on the basis of sexual orientation by mentioning per se sexual orientation in Article 9(3). This provision reads;

9)3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.

²⁷Supra Note 1 at p.3.

This recognition and protection of gay persons was not a matter to be considered lightly by the government, but was of much importance to the government as was the vision to completely end all forms of discrimination. This was expressed in the following edited version of former South African President, Nelson Mandela's inauguration speech of 9th May, 1994.

" Mr Master of Ceremonies, Your Excellencies, members of the Diplomatic Corps, my fellow South Africans; Today we are entering a new era for our country and its people. Today we celebrate not only the victory of a party, but a victory for all the people of South Africa. Our country has arrived at a decision. Among all the parties that contested the elections, the overwhelming majority of South African people have mandated the African National Congress to lead our country into the future. The South Africa we have struggled for, in which all our people, be they African, coloured, Indian or White, regard themselves as citizens of one nation is at hand...In 1980s, the African National Congress was setting the pace, being the first major political formation in South Africa to commit itself firmly to a Bill of Rights, which we published in November, 1990. These milestones give concrete expression to what South Africa can become. They speak of a constitutional, democratic, political order in which regardless of colour, gender, religion, political opinion or sexual orientation, the law will provide for the equal protection of all citizens."²⁸

South Africa today is the only African country where homosexuals and lesbians are free to walk the streets and not hide their sexual orientation for fear of being persecuted. Gay groupings exist in all the communities and there exists a nationally and internationally recognised parent organisation, the National Coalition for Gays and Lesbian Equality, (NCGLE), which monitors the smaller and subsidiary associations.

²⁸Zambian Human Rights Manifesto, Published by Zambia Independent Monitoring Team, Lusaka, Zambia. October, 1998.

iii) **CONCLUSION**

This chapter has discussed the attitudes that surround homosexuals in two culturally different communities, Europe and Africa.

In Europe, there is a general tolerance towards homosexuals and legal precedents have been set to provide for their protection and non interference in their private lives. Not all issues have however been settled regarding homosexuals. For example, the question of whether homosexual relations can be viewed as legal matrimonies is still debatable.

Africa has generally rebuked homosexuals. However, South Africa remains, as at present, the only country in Africa to accept homosexuality, to provide for the protection of homosexuals through its constitution.

The next chapter discusses the existence and legal position of homosexuality in Zambia.

CHAPTER THREE

HOMOSEXUALITY IN ZAMBIA

- (i) The Gay Movement in Zambia
- (ii) Government Position on Homosexuality
- (iii) The Church and the Community on Homosexuality
- (iv) Conclusion

CHAPTER THREE

HOMOSEXUALITY IN ZAMBIA

This chapter discusses the existence of homosexuality in Zambia. The first part of the chapter looks at the Gay Movement and the justifications for its existence. The second part looks at the Government position regarding homosexuality. Finally, the third part looks at the Church and the general public's reaction concerning gay persons.

i) THE GAY MOVEMENT IN ZAMBIA

In the recent past, the Zambian population has been subjected to headlines, letters and articles concerning the existence of gay persons in the country. This situation was triggered by an article in the Post Newspaper of 14th July 1998 where one Francis Yabe Chisambisha 'came out in the open' and boldly stated his sexual orientation.

Chisambisha actually claimed that he had had sexual relationships with over 33 different men within the country.

Following this declaration by Chisambisha, an association to look into the interests of gay persons was formed, although the legal status of this association is yet to be determined. This association for the gay persons in Zambia is the Lesbians, Gays and Transgender Persons, LEGATRA. The objectives of the Association are as follows:

- a) giving legal advice and protection to any person being discriminated against on the basis of his or her sexual orientation;
- b) offering counselling services to victims of gay-lesbian bashing or oppression;

- c) creating support groups for victims of any form of discrimination on the basis of sexual orientation;
- d) conducting HIV education and outreach campaigns to persons or groups of persons who do not easily have access to government and non-governmental HIV/AIDS programs, including prisoners;
- e) helping parents, friends and relatives of gay persons;
- f) supporting government, NGOs and the United Nations efforts in popularising human rights education, promotion and protection mechanism;
- g) advocating for law reform to enhance and ensure the democratic process in Zambia is inclusive to all persons regardless of any distinction.¹¹

LEGATRA can be said to be the brainchild of the Zambia Independent Monitoring Team, (ZIMT), which lobbied for its formation. ZIMT has included among its functions, to advocate for the rights of gay persons. ZIMT has also been involved in organising a fora at which the LEGATRA met to constitute its first executive members. ZIMT is currently the major source and authority for many gay publications, from both local and foreign centres. At the moment, LEGATRA is running a monthly news magazine known as LEGATRA News. The first issue of the magazine was released for the months of April and May 1999. However, in spite of the magazine being said to be a monthly one, at the time of doing this work, the third issue since inception was still being processed. The magazine contains issues of concern to the gay persons, which are both negative and positive towards their sexual orientation. Also included are issues on general human

¹¹LEGATRA Legal Opinion, Drawn by Messrs SK & Associates, October/November 1998.p.2.

rights awareness and other articles concerning the work of other NGOs around the country.

LEGATRA has defended its existence. The authority for defending its existence has been the Republican Constitution. LEGATRA has firstly noted that, " the Republican Constitution is supreme in Zambia and therefore any Act of Parliament which is contrary to the Constitution may be quashed on that basis."²

From this, LEGATRA believes that in spite of the declaration of Zambia as a Christian nation in the preamble of the Constitution, there is a provision in the same Constitution for freedom of thought and religion and that, "no Act of Parliament has been enacted to the effect that the Bible shall form part of our laws nor that the Bible is supreme. The Bible cannot therefore be used to suppress people with different thoughts and beliefs."³

The Association also believes that in spite of section 155 of the Penal Code, CAP 87 of the Laws of Zambia, which makes homosexuality a criminal offence, the intentions of the Association are to have this provision abolished.

According to section 155 of the Penal Code, homosexuality is an unnatural offence. That is, homosexuality is an act done against the natural order of man. LEGATRA has claimed that its activities are not to encourage unnatural acts but, "rather, the Association is acting

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² Ibid, p.2.

³ Ibid.

as a support unit of victims just like an NGO taking care of drugs victims, AIDS victims and prison victimisation."⁴

LEGATRA therefore views itself as the gay community's champion, ready to speak for them and to change the existing laws against homosexuals in the country.

ii) **GOVERNMENT POSITION ON HOMOSEXUALITY**

Government's position on homosexuality was specifically addressed in Parliament on the 15th of September 1998, when a point of order was raised by Dr Ludwig Sondashi who wondered why some people had gone around declaring their homosexual status and wanted to know what was Government's position on the matter.

In reply to this request, the Vice President, Lieutenant General Christon Tembo, made available to the House a communication on Government Policy on Homosexuality which he said was a "clear reflection of legislation and in particular the Penal Code, CAP 87 of the Laws of Zambia."⁵

The Vice President stated that, "homosexuality goes against the order of nature and morality as understood in the Zambian society. Homosexual acts are therefore criminalized."⁶

⁴ Ibid.

⁵ Parliamentary Debates on Government Policy Statement on Homosexuals in Zambia. Tuesday 15th September 1998. p.1.

⁶ Ibid.

And indeed section 155 of the Penal Code provides that;

"Any person who:

has carnal knowledge of any person against the order of nature; or

has carnal knowledge of an animal; or

permits a person to have carnal knowledge of him or her against the order of nature is guilty of a felony and is liable to imprisonment for fourteen years."

Similarly, section 158 of the Penal Code provides as follows:

"Any male person who, whether in public or private commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or in private is guilty of a felony and is liable to imprisonment for five years."

The Vice-President further stated that anybody who agitated for homosexual practices in Zambia was at risk of being arrested for the criminal acts or for conspiracy to commit criminal acts as per section 394 of the same Penal Code, which makes it an offence for any person to conspire with another to commit homosexual practices.

These provisions of the Penal Code were also stated as not being in contravention of International Conventions ratified and acceded to by Zambia.

"The provisions of the Penal Code that have been cited are in no way inconsistent with or in contravention of Article 22 of the International Covenant on Civil and Political Rights, (ICCPR), to which Zambia is a Party."⁷

The justification for non contravention was based on the principle of the limitation clauses in the *Zambian Constitution* which allowed the state to derogate the rights of freedom of association and assembly which otherwise would not limit gay associations.

"Mr Speaker, Sir, all the above Articles while guaranteeing the freedom of association and assembly, have limitation clauses for purposes of protecting certain public interests such as public morality. This confirms that human rights do not operate in a vacuum but within social norms, which are a summation of numerous interests and generally accepted international legal principles."⁸

Since homosexuality is criminalized, the Vice-President concluded that an Association such as LEGATRA formed to further the interests of homosexuals could never be registered in Zambia.

⁷ Ibid, p.3.

⁸ Ibid.

"Those who will persist in championing the cause of homosexuals in Zambia risk being arrested for felonies of committing criminal acts or for conspiracy to commit the criminal acts. This, Mr Speaker is government's position."⁹

There have actually been instances where persons have been arrested for sodomy acts. It is however observed in this paper that the nature of these acts for which some individuals have been arrested has been more violence oriented. Even in those communities where homosexuality is not prohibited by the law, these acts are those, which would call for the ordinary intervention of the police. One such incidence is the item that was reported on the 07hours News on Zambia National Broadcasting Corporation, ZNBC, Radio on 1st March 2000. This item was as follows;

"A man in Kitwe committed acts of sodomy on a 10 year old boy by forcing him to a bush and penetrating his organ into the boy's mouth and anus. He has been arrested."

Another incident was when a man of German origin by the name of Walter Raltze was arrested on sodomy charges for allegedly raping or forcing himself on the security guard manning his premises.¹⁰ The charges were, however, dropped in Court because the security guard withdrew the claim. A reliable source however, informed the writer that the charges were dropped because the accused paid the complainant a sum of K8,000,000-00.

There is one striking problem with the Zambian criminal law that prohibits homosexuality. The problem is that the Penal Code or any other statute does not

⁹ Ibid, p.4.

specifically state or codify what actually amounts to 'unnatural acts' or 'acts of gross indecency'. One is left to wonder what criterion has been used to include homosexuality in the interpretation of the relevant sections of the criminal law.

iii) **THE CHURCH AND THE COMMUNITY ON HOMOSEXUALITY**

In Zambia, there is a generally strong voice, which cannot sympathise with the gay community and its plight. It is to be expected that the Church has carried an equally authoritative opinion on homosexuality, but this time based on the Bible.

The declaration by Francis Yabe Chisambisha that he was a homosexual triggered many reactions from the church. One strong reaction was from the Superintendent of the Church of God for the Central African Region, Archbishop John Mambo.

Bishop Mambo criticised ZIMT President, Alfred Zulu for defending the rights of homosexuals. He stated in an interview with the Post Newspaper that, "homosexuality cannot be an issue of human rights because it is against the teachings of the Bible which says a man will marry a woman."¹¹

He further stated that, "it is important for us, as Christians, to be on the lookout.

When people come out in the open, we must find ways of helping them."¹²

¹⁰ The Post, December 16, 1999,p.7.

¹¹ The Post, July 16, 1998, p.7.

¹² Ibid.

homosexuals in Zambia was that there is quite a good number registered with LEGATRA.

The general public's opinion over homosexuality during this research was some times self-explanatory. The writer of this work was in several instances harassed verbally to a point of intimidation as to why the research concerning the topic of homosexuals was being conducted if not only to 'support the gays'. The amount of prejudice and intolerance was shocking, especially at such organisations as the Legal Resources Foundation which was approached for legal information concerning homosexuals. Mr Robby Shabwanga was in the forefront of these prejudicial remarks. However, the Centre did make available a copy of the Newsletter that contained a comment on homosexuality in Zambia.

iv) **CONCLUSION**

The Gay Movement , the Government, the Church, and the rest of community have spoken out on the question of homosexuality in Zambia.

At the same time, there are laws in the country that incriminate the practice. However, these laws have had no effect on homosexuals who carry on the act between consenting adults, unless they have been done in such a way as to cause some physical harm on the victim. In those instances, the police and the Courts of law have applied the laws against sodomy.

The next chapter will discuss the standing of Zambia's sodomy laws in light of the International Covenant on Civil and Political Rights,(ICCPR), an International Instrument which has been used by gay activists to strengthen their call for the protection of gay persons and their right to freely associate sexually with any of their liking.

CHAPTER FOUR

THE LEGAL IMPACT OF INTERNATIONAL LAW ON ZAMBIA'S CURRENT LEGAL POSITION ON HOMOSEXUALITY

- (i) Nature of the Zambian Legal System and International Law in Relation to Gay Rights**
- (ii) The Individual Reporting System as Provided by the Optional Protocol to the ICCPR**
- (iii) Limitation Clauses**
- (iv) Conclusion**

CHAPTER FOUR

THE LEGAL IMPACT OF INTERNATIONAL LAW INSTRUMENTS ON ZAMBIA'S CURRENT LEGAL POSITION ON HOMOSEXUALITY

It has been stated that;

*where national laws do not explicitly ban discrimination against homosexuals, their only recourse to protection is the appeal to international human rights law, which includes all multilateral agreements in the area of human rights.*¹

This Chapter therefore endeavors to reconcile the current legal position of homosexuality in Zambia to internationally set standards.

The most relevant international covenant concerning the welfare of homosexuals is the International Covenant on Civil and Political Rights, (ICCPR). This Covenant has been used several times by gay activists as providing some form of protection to homosexuals. In fact, as earlier noted in Chapter One of this work, in the case of *Nicholas Toonen V Tasmania*², the Human Rights Committee in its decision did state that the protection category of 'sex' in Article 2 of the ICCPR should be taken to include sexual orientation.

In this case, it was highlighted that Article 17 of the ICCPR protecting one's right to privacy had been violated by the state of Tasmania on the basis that Tasmanian criminal legislation contained

¹Written Communication, May 1996, Peter Nobel.

²UN. Doc. CCPR/C/50/D/488/1992 (1994).

a provision which prohibited sexual contact between consenting adults of the same sex in private. The final decision in this case acknowledged that the 'sodomy legislation' violated Articles 2(1) and 7(1) of the ICCPR and the Human Rights Committee recommended that the legislation in contention be repealed.

i) **NATURE OF THE ZAMBIAN LEGAL SYSTEM AND INTERNATIONAL LAW
IN RELATION TO GAY RIGHTS**

Zambia acceded to the International Covenant on Civil and Political Rights, (ICCPR), on 10th April, 1984.

Article 17 of the ICCPR has been used by gay activists as guaranteeing the right to one's private life without being subjected to any unlawful interference by the state.

Sexual relationships are issues of privacy between people, whether heterosexual or not. As such, applying Article 17(1) of the ICCPR, and going by Human Rights Committee's inclusion of sexual orientation into the category of protection, implies that there should be no unlawful or unreasonable interference with even homosexual relationships.

The Zambian criminal law, on the other hand, prohibits homosexuality by virtue of sections 55 and 58 respectively, of the Penal code.³ This prohibition is of course a clear interference by the

³ CAP 88 of the Laws of Zambia.

state in homosexual relations. Does this, therefore, mean that Zambia has violated the ICCPR which it acceded to?

In order to arrive to an answer for this question, it must be considered what effect international legislation or statutes have on the domestic laws.

Treaties or international covenants (like the ICCPR) once duly made, create binding obligations for the states parties to abide by whatever is contained in them.⁴

Certain theorists have rested the binding force of treaties on the latin maxim *pacta sunt servanda*, or in other words, that states parties are bound to carry out in good faith the obligation they have assumed under the treaty.⁵

Furthermore, Article 26 of the Vienna Convention on the Law of Treaties states that, “all treaties are binding on the parties thereto, and must be performed by them in good faith.”

Application of the Convention at international level is not necessarily the same as at the domestic level of a states party. International conventions will only become binding within the domestic legal system of a states party in accordance with the nature of the legal system of that state. There are two schools of thought with regard to the type of legal systems, Monist and Dualist.

⁴Starke JG. Introduction to International Law, Butterworths London 1989,p .438.

⁵Ibid.

The Monist School of Thought regards international law and domestic law as being one and the same: “There cannot in the view of the Monist writers be any escape from the position that the systems, because they are both systems of legal rules, are inter-related parts of the one legal structure.”⁶

The Dualist School of Thought, however, holds the view that in order for international law to become binding upon a state, the state must give consent to it by adopting the international law specifically into its domestic legislation.

Zambia has inherited, from Britain, a legal system which falls under the Dualist School of Thought. Therefore in order for international treaties, such as the ICCPR, to have effect in the Zambian legal system, the provisions of the covenant need to be separately incorporated into the municipal law through an Act of Parliament. Unless this is done, provisions of an international covenant cannot be part of the law of Zambia. This, therefore, means that “international treaties, ratified though by Zambia cannot be directly invoked in Zambian courts.”⁷

The Bangalore Principles on the Domestic Application of Human Rights by Judges although not legally binding, can be used in the interpretation of domestic laws in such a way that even if a state has not domestically incorporated Convention provisions, the judges must not ignore them.

The Bangalore Principles were formulated at the meeting held in Bangalore, India in February 1988 with subsequent meetings in Zimbabwe (April 1989), Banjul, Gambia (November 1990), and Abuja, Nigeria (December 1991), where the principles were consolidated and affirmed.⁸

⁶Ibid, p.4.

⁷Paper presented at the Afronet/SAPES Joint Workshop on the Role of Civil Society in Promoting Democracy in Zambia: Prof. Carlson Anyangwe: The Zambian Legal System and International Human Rights Instruments p.15.

⁸ Commonwealth Law Bulletin, Volume 19, No. 3, July 1993, Commonwealth Secretariate, London, p.1265.

The thesis of the Bangalore Principles is that, “judges should not ignore such important rules on international legal norms on human rights. When appropriate occasions present, they should ensure, so far as possible, that their statement of the local laws conforms to the basic principles of human rights collected in international law.”⁹

Zambia is part of the Commonwealth, and cannot ignore the Bangalore Principles. The Zambian judiciary must be moved by these Principles and interpret the ICCPR provisions in line with international human rights standards. These standards confirm sodomy laws as discriminating against gay rights.

This is the real challenge which gay activists in the country are faced with. Their main argument is that Zambia is discriminating against gay persons and those wishing to champion their cause by the mere existence of sodomy laws which are in contravention of the provisions of the ICCPR. But how can Zambia be called upon to equate her stance on homosexuality to the ICCPR provisions which have not been incorporated in the legal in the legal system.

It has been suggested that where Parliament is slow to act, the judiciary ought to consciously take an ‘activist’ role and provide remedies by construing Bill of Rights provisions in the Constitution in the light of similar provisions in international human rights instruments, particularly as interpreted by international human rights implementing bodies.¹⁰

⁹ Ibid.

¹⁰ Ibid.

An example here is the Human Rights Committee's inclusion of 'sexual orientation' in its interpretation of 'sex' in light of Article 2(1) of the ICCPR in the *Toonen* case.

The Canadian Supreme Court also recently held in *Vriend V Alberta* (1998)¹¹ that sexual orientation must be read into the provisions of the Canadian Bill of Rights on non-discrimination.

The Zambian Constitution in its Bill of Rights provides for a non-discrimination clause in Article 23.

In line with the standard that has been set in *Nicholas Toonen V Tasmania* and *Vriend V Alberta*, it should be expected that when faced with a case challenging the legality of the sodomy laws, the Zambian Judiciary must be able to interpret sex, from the category of protection, as including sexual orientation. Then and only then will it be possible to remove sodomy laws be able to be removed from the Zambian Penal Code as they will be interpreted as being discriminatory and thus in violation of Article 23 of the Constitution.

¹¹1 S. C. R

ii) **THE INDIVIDUAL REPORTING SYSTEM AS PROVIDED BY THE
OPTIONAL PROTOCOL TO THE ICCPR**

The first Optional Protocol to the ICCPR entered into force on 23rd March, 1976. Zambia acceded to this protocol on 10th April 1984.

The Optional Protocol pertains to the right of the individual to appeal to the international community in case of violation of his guaranteed rights and freedoms. The Human Rights Committee considers communications from individuals who claim that their human rights protected by the ICCPR have been violated by a state party.

A person who is therefore, aggrieved by the existence of the sodomy laws and cannot invoke a favourable audience before the domestic Courts, is availed a chance through the Optional Protocol to make this appeal before the Human Rights Committee.

iii) **LIMITATION CLAUSES**

Limitation clauses are another important subject of concern when comparing Zambian legislation with internationally set standards of human rights protection.

The Government's position on homosexuality has clearly outlined that the issue of homosexuality is curtailed by "limitation clauses for purposes of protecting certain public interests such as morality."¹²

Article 20(3) of the Zambian Constitution is a derogatory clause. This Article provides that, "Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision that is reasonably required in the interests of defence, public safety, public order, public morality or public health..."

This limitation clause has been invoked to restrict homosexuality in the interest of public morality. However, in relation to the standards set by international law, Article 20(3) seems to fall short of the accepted norm. According to the European Commission on Human Rights, (ECHR), "in order for a restriction to be prescribed by law, it must be adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the citizen to regulate his conduct."¹³

However, the interests for which restrictions can be made under Article 20(3) are very broad as they are, "expressed in vague terms . There is no definition of public safety, public order, morality or defence. Almost any restriction can be justified on these grounds."¹⁴

¹² Parliamentary Debates on Government Policy Statement on Homosexuals in Zambia. Tuesday 15 September 1998.p.3.

¹³ Zambia Law Journal, Volume 30 1998.p.125.

¹⁴ Ibid, p.127.

The question of restriction of homosexuality has been justified on the basis of upholding public morality.¹⁵ However, the question of public morality is subjective. Nevertheless, states can apply a margin of appreciation in relation to the restrictions which the domestic laws provide. The basic idea behind the concept of margin of appreciation is the notion of discretion which states have in determining the circumstances in which human rights may be restricted in the national interest.¹⁶

The matter of justification and lawfulness of the restrictions is subject to objective legal scrutiny against standards set in human rights treaties.¹⁷

The standards set over the issue of restriction of homosexual practices is that such restrictions are unjustified and criminal sanctions against homosexuals must be repealed.¹⁸

Public morality might be explained in the light of Christian values considering that Zambia was declared a Christian nation. If Christianity is to be the standard for ascertaining what is moral or not, then not only homosexuality should be condemned in our laws, but also all vices which are unbiblical or sinful. The Bible certainly condemns homosexuality and all other sins without any special treatment of other sins. “Do not be deceived. Neither the sexually immoral nor idolators

¹⁵ Supra, note 9.

¹⁶ Zambia Law Journal, Special Edition, 1998.p.116.

¹⁷ Ibid, p.117.

¹⁸ Supra Note 20, Chapter Two.

or adulterers nor male prostitutes nor homosexual offenders, nor thieves nor the greedy, nor drunkards, nor slanderers, nor swindlers will inherit the Kingdom of God.”¹⁹

Furthermore, Jesus taught that sinners should not be punished for their sins by fellow men. This is contained in a passage in which the Pharisees and other teachers of the Law brought before him an adulteress woman whom they wished to stone to death. Jesus challenged them and asked any of them who had not sinned to throw a stone at the woman, but there was no one who could do this.²⁰

Only God is to be judge over our sins and to punish us. “There is only one Lawgiver and Judge, the One who is able to save and destroy. But you, who are you to judge your neighbor?”²¹

Christianity therefore calls for homosexuality to be treated on the same level with all activities which are sinful if it is to be condemned. Christianity also demands that as much as all sins should be condemned, punishment for sinful acts is a matter to be left entirely to the Almighty God.

iv) **CONCLUSION**

The Zambian legal position concerning homosexuality is not at par with internationally set standards. Zambia needs to go further than merely being a signatory to the ICCPR and take a

¹⁹ I Corinthians 6 verse 9, The Holy Bible, New International Version, (NIV).

²⁰ John 8 verse 5-10, NIV.

²¹ James 4 verse 12, NIV.

deliberate step to incorporate the convention into its domestic legislation expressly. In doing so, Zambia will have to adequately address the issue of the legality of homosexuality. This can only be expected to yield positively towards homosexuality in accordance with the internationally set standards.

CHAPTER FIVE
SUMMARY AND RECOMMENDATIONS

CHAPTER FIVE

SUMMARY AND RECOMMENDATIONS

A. SUMMARY

Homosexuality is an issue that has always divided society, especially when the idea is being mooted for the first time.

The Zambian population has been brought to the realisation that homosexuality exists even in our community in spite of the provisions under the Penal Code which prohibit this act. In fact, these laws have been challenged by gay activists as perpetrating discrimination against homosexuals.

The basis of the gay activists argument in support of legalising homosexuality has been from the international law forum.

Chapter One outlined the legal basis of gay rights as stemming from the human rights concepts of non-discrimination of individuals, equal protection of the law, and right to privacy, which apply universally.

Chapter Two illustrated European and African attitudes towards the issue of homosexuality. Whilst Europe has legally embraced and interpreted homosexuality under the concept of 'sexual orientation' as an issue rightly falling within the ambit of human rights protection, Africa holds a

totally contradictory view. Africa has disclaimed the whole concept of homosexuality and categorised it as being a foreign practice. South Africa is however the only exception to this African voice and has provided recognition and protection of homosexuals in its constitution.

Chapter Three specifically looked at homosexuality in Zambia. The problem in Zambia is that on one hand, there exist laws that make homosexuality illegal and provide a penal sanction, whilst on the other hand, others are of the view that these laws discriminate against them.

The issue of reconciling the Zambian legal position on homosexuality to internationally set standards, has been the concern of Chapter Four.

Zambia's legal position against homosexuality falls below the international standards set for the protection of human rights.

B. RECOMMENDATIONS

It is clear that the issue of homosexuality in Zambia cannot continue to be ignored. The penal sanctions in place which are meant to provide a solution through prohibition of homosexuality have been challenged. In relation to these penal sanctions, gay rights cannot, and do not have a place in the current Zambian legal system. This is because the law clearly makes illegal any form of activities which might impinge on advocacy of gay rights.

Not only do the laws hinder any form of gay rights advocacy, but the general consensus of the Zambian public also discourages it.

International law concerns, when invoked over the current legal position of homosexuality and gay rights advocacy in Zambia, nevertheless demands that this position be redressed in order to meet international standards.

In line with the above, Zambia must repeal its sodomy laws, section 55 and section 58, of the Penal Code.

The inclusion of 'sexual orientation' in the category of non-discrimination, in Article 23 of the Constitution would obviously remove any queries which might continue to exist over the actual protection of gay persons from discrimination. Nevertheless, even European states in which gay relationships are not penalised have not specifically and expressly included 'sexual orientation' in their non-discrimination constitutional clauses. What is of importance is that the judiciary must be able to interpret 'sexual orientation' within this non-discrimination clause.

As happens in heterosexual relationships, there is a need to regulate homosexual or gay relationships. Minors in this instance are of particular concern. Minors must be protected from any sexual abuses.

Since incidents of rape have been reported in homosexual activities, there is also a need to protect non-consenting partners from abuse. Hence the requirement that all sexual relations of homosexual nature must be restricted to consenting adults.

Manipulated...

By Reuben Phiri

PRESIDENT Frederick Chiluba may curve himself a third term of office by manipulating the Constitution, Inter-Africa Network for Human Rights (AFRONET) executive director Ngande Mwanajiti has warned.

Mwanajiti, in an interview last Friday, warned that lack of discussion by various political parties, including the MMD, over who the next president of the Republic of Zambia would be leaves the possibility of President Frederick Chiluba technically manipulating the Constitution to continue his rule when his term ends in the year 2001.

He said it was the responsibility of every political party, the MMD inclusive, to discuss the

To page 4

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Shimoto designs

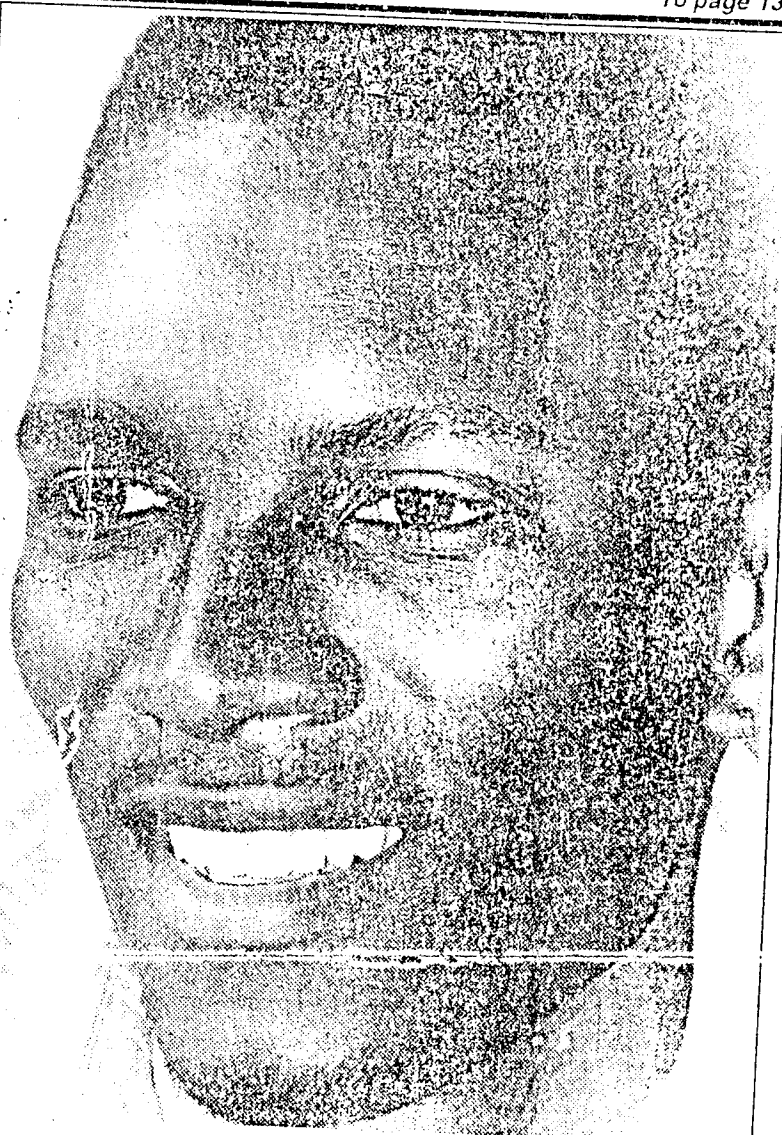
SE Prime Minister Ryutaro yesterday resigned to take liability for his party's devastating elections held recently. oto's Liberal Democratic (P) will meet next week to new leader. - BBC.

Catholic priest to marry nun

By Sally Pook

A ROMAN Catholic priest and senior member of the Dominican Order in England has shocked colleagues by announcing his intention to marry a much younger former Dominican sister and pupil.

To page 13



I'm 25, gay with 33 sex partners

By Goodson Machona

I have been a homosexual for over 10 years, Francis Yabe Chisambisha revealed to *The Post* last week.

Francis, 25, in a walk-in interview, said he has had homosexual relationships with 33 men and coming out in the open about his homosexual sex orientation may prove costly.

"I know this will cost me friends and relatives but I have been longing to come out in the open for a long time," he said.

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THE POST, TUESDAY, JULY 14, 1998

ANNEXTURE 1.

I AM GAY AND

From Front Page

Asked when he became gay, Francis replied: "I first realised that I was gay when I was 12 years."

Rolling his eyes, he continued: "I was in bed with my cousin, Eric, and I had these feelings... The feelings were built up and I asked him to do me a favour by caressing me. Eventually, I somehow started kissing him and I also started caressing him. I then told him to turn around and I started making love to him. We continued caressing and kissing, eventually I ejaculated. But afterwards I felt that what we had done was wrong. I, however, soothed myself with the deception that this was one of those things. I thought we were just young and not realising what we were doing."

But a week later they were at it again and, in short order, it became a daily occurrence. "One day I did it with a girl. We were doing *wiki buta* (playing a couple). But during the night, I felt so bad. I didn't enjoy what I did to the young lady compared to what I was doing with my cousin," he said. "I felt bitter. I realised that I only did it out of curiosity, because my friends were also doing it."

Francis said when he was 15 years old a friend Isaac told him about how disappointed he was with his girlfriend for turning down his unromantic advances during a date.

"He complained that he didn't know how to break the tone of feelings he had," he remembered. "Jokingly, I told him I could help relieve the feeling. But he said how can you when you are a man? I lied to him that I read in a book how men can relieve each other. He agreed and I started caressing and kissing him. I undressed him and started playing with his manhood. I told him to turn around and started making love to him. After I ejaculated, he also asked me to turn around and he made love to me."

The act took on heightened proportions when he went to Chiwala Secondary School, a boarding school for boys in Ndola rural.

"This problem - I don't know if I can call it a problem - became serious when I was at Chiwala Secondary School," he said. "It seems the way I used to behave used to attract some of the boys. They used to tell me that I behaved like a girl. I didn't know there were people like me. They started inviting me to their dormitories and told me stories aimed at arousing my feelings."

According to Francis, the first boy he had intercourse with at Chiwala Secondary School invited him to masturbate with him.

"He volunteered to be the first to play with my manhood. But the way he did it was so painful so I decided to show him how to do it properly," Francis said.

"After this encounter, he introduced me to his fellow gay friends."

Thus from 1985 up to 1994, when Francis completed school, he never made love to a member of the opposite sex.

"We were 11 in our group and we used to make love every night," he said.

But because of peer pressure he was forced to have a relationship with a girl. "Her name was Cecilia. She is now doing a secretarial course at Kabwe Trades Training School," Francis said rather coyly. "I had a steady relationship with her for two years. I never told her that I also went out with men. I was scared that she was going to feel dismayed and destroy my character and I was also trying to

protect her."

After Cecilia, he went out with Jennifer.

"She is now happily married. I also went out with another girl called Chibwe. She is now doing her last grade. Then there was Brenda. She is training as a nurse at the Livingstone General Hospital and the last girl went out with is Kabwe," he disclosed. "She is not doing anything. She completed school last year."

Francis has also gone out with six other girls but, according to him, it was out of peer pressure. "I met them in discos. It was a case of your friend hooking a girl and you also hook one," he said. "Sex with a lady or a man is just the same. What matters is the ejaculation point... that sensation which is characterised with the feeling. The only bad thing which I am with a girl is that I dominate most of the activities during sex and you feel you still want to go strong. It makes me feel bad unlike when I am with a man."

You want to compete and see who is the real man..."

Asked whether he feels any regret being a homosexual, Francis took a deep breath then said: "Partially I would say I regret being a homosexual because I may not withstand the criticism I may receive from the general public for going public. I know that people will be pointing fingers and saying that one is gay because they don't understand what it means to be gay."

He said he has been reading a lot of literature on homosexuality to try and establish why he is the way he is but so far his efforts have yielded nothing.

"I really want to know why I am like this biologically," he said. "Science doesn't say whether it's hereditary or the way I was brought up."

Francis then went on to explain that he was born out of wedlock. His mother told him that his father never accepted him as his child and, allegedly, went into hiding. His mother was later married and had two daughters

but in 1976 she became mentally ill and he had to be brought up by uncles.

"I still don't have a permanent place and I can't say this uncle is fully responsible for my life," he said, adding that life has not been rosy. "The way the African culture is, most women will not keep a child who is not their own. She will try to pick some faults so that she can get rid of you... I have suffered a lot and it has disturbed my life."

But he swore that is not the root cause of his homosexuality. "I have heard of people who have got a lot of wealth but are in the act," he said. "Only when I know why I am like this, that's when maybe I will regret because I will know what I have been deprived of. But I think it's a man nature to be homosexual."

He also ruled out going for a sex change. "I wouldn't say I am a woman trapped in a man's body for me to think of going for a sex change," he said. "I just don't know why I have found myself in this group

ENJOYING IT . . .

of people."

He complained that most of his friends spurn him once they discover that he is gay.

"When I try to seduce a friend and he is not into it, he resents me. I feel very bad. I feel that my dignity has been attacked. That is the part I don't like," he said rather remorsefully. "I know this will cost me friends and relatives but I have been longing to come out in the open for a long time."

He emphasized that he is not doing it for money or to gain publicity.

"This is a personal decision. I just want to break the news that I am gay," he said. "To have this courage is not because I want to be rich. I have never exchanged my sexual intercourse with somebody for money. We just do it because that is how we want to get satisfied. I have also never gone out or been approached by anyone for money... I have never gone out with anybody I never knew."

He explained that his decision to go public is two-fold.

"Firstly, what I want is to tell society that this gay thing has been there even before our generation. I want society to be aware that it is happening in Zambia and there are people who want to be respected for their choice. It's just that in our African culture, it's believed to be taboo and hence people do it in hiding," he said. "But the fact that I am doing it, shows that this practice is there and will continue to be there as long as man is there. Our friends in South Africa and Zimbabwe and elsewhere have spoken out that they want their feelings to be respected and be allowed to go here in Zambia. It makes me feel bad to be criticized that what you are doing is wrong when I am not causing harm to the person I am doing



Francis - I want to tell society that this gay thing has been there even before our generation

gaged is small businesses," he said.

According to Francis, although there are such things as a "bull" (male) and "drag" (female) in homosexual relationships, in most of his relationships no one takes the male role.

"We all pretend to be men," he said. "But most times, I take the part of the decision maker. When my partner says today I want to make love and I don't feel like making, I always say no."

Francis says his ideal partners are light skinned men with hairy bodies.

"It's not all people that I have feelings for. It's not easy to give in to a stranger whom I don't know. I have to develop feelings for him. But I am down with men who are light skinned. I also get attracted to people who have hairy bodies. He should have medium height, not too fat and not too slim," he said. "He must also be handsome and clean. I also look at how he behaves and what groups he hangs around. I have never done it with people who are not in school or someone I don't know. I have also never had a white man or somebody older than me. Maybe because I have never been approached. But I wouldn't want to go out with somebody with an age difference of over 15 years."

Francis has, however, kept his sexual preference secret from his family.

"I know that the time is not yet ripe for them to know. But I have had a few cousins who have remarked jokingly that I could be a homosexual because they have never seen me with a girl," he said. "I just pretend to them that I want to lead a straight life."

He is aware that the HIV/AIDS pandemic is blamed on homosexuals but he argues that this is not true.

"AIDS is for all regardless of their sexual preferences," he said. "But that doesn't mean I am not scared of AIDS. I know it's a killer disease and I have been very careful. From the moment I was aware that there is AIDS, I have been using condoms."

Of the 13 men that Francis has gone out with, two have died - but he says none of them from AIDS.

Michael was involved in a car accident, a casualty which he was going to living alone and the other one, Boniface, died of malaria combined with asthma," he said.

Asked whether he knows that homosexuality is an offence under the Zambian law, he replied: "I would say partly. I am aware and partly not. I am aware because I just hear about it on the radio and read it in newspapers. I have also heard politicians condemn that it has no place in the African culture but I have never seen or heard any one who has been arrested and charged because of being homosexual. But I feel it's very unfair. We have fundamental human rights which one can exercise although, I admit there should be limits. But African governments should just put their pride and shame aside and not pretend that it doesn't happen in Africa. In Europe and America, governments have come to understand gay people and they let them lead their lives."

Presently, he is dating a man whom he, however, declines to name.

"He works for someone who has a small shop and runs a private taxi," he said proudly. "I would like to get married to him one day because that is the only way I am going to be happy. I want to be with someone of my kind and share our lives together."

But his only worry is that he is not sure if there is any Church in Zambia which would agree to bless their "marriage."

"But it's really been my wish," he said. "We may have to marry secretly in a country where it can be accepted."

Asked if he would kiss and hold hands with his lover in public, he quickly answered: "I have never shown affection for my partner in public but when I get married, I would do it. If we have to share the shame, he it."

Asked about having children of his own one day, he said: "Having a child is not my wish but this doesn't mean that I don't have regard for children. If I can be given a chance to adopt one, I will give it to him. I have never had any children but I have gone through the experiences that I have gone through. I know what children long for."

From Front Page
Archbishop Mambo, in an interview, said "homosexuality cannot be an issue of human rights because it is against the teachings of the Bible which says a man will marry a woman".

"I wouldn't condemn the young man for coming out in the open but it is wrong for Zulu to make it a human rights issue." Archbishop Mambo said. "It's important for us, as Christians, to be on the lookout. When people come out in the open we must find ways of helping them."

Mambo said Francis should be praised for his bravery to come out openly and that he should be accepted.

"What he was saying is that he needs help and he should be accepted and helped." Archbishop Mambo said. "There are no rights like that. Zulu and others should concentrate on promoting dialogue and defusing the political tension that is looming in the nation."

Ruling MMD secretary for transport in the National Executive Committee, Lawrence Phiri, said Zulu's support of the practice of homosexuality in Zambia "is but a shameful and embarrassing situation".

Phiri, in a statement released in Lusaka yesterday, charged that Zulu "is a businessman who has always used ZIMT to raise his money by insulating the MMD government and its leadership".

"Now that everyone, including his masters, are tired of the rhetoric, he has resorted to Socratic issues of gays to please his masters in the West for more money." Phiri charged.

MAMBO ATTACKS ZULU FOR DEFENDING HOMOSEXUAL

He said Zulu, and all victims of sodomy, needs strong prayers from all Christians "in this country which is a Christian nation".

Another Lusaka resident, L. Muzinba, said Zulu's suggestion that homosexuality is not a sin made sad reading.

She is a transgression of the law, Muzinba said. "Mr. Zulu may either have been misguided or he has some veritable authority for his statements which he wants to share with the rest of us. Perhaps you have put Mr. Zulu under pressure and he is seeking his valued opinion on all subjects."

Southern African Human Rights Foundation (SAHRF) chairperson Archibald Ngecho, in an interview yesterday, also said despite it being an individual right to be a homosexual, it still remains a taboo in the African tradition.

"We should not even gloss over that factor. Based on our cultural side it is against African tradition," Ngecho said.

He said Francis should not be ostracised for coming out in the

open but instead he helped through counselling.

Francis confessed in an interview with *The Post* last week that he has been a homosexual for the last ten years and has had 10 partners.

South African President Nelson Mandela once in a speech said that he was a homosexual and he was proud of it.

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SCHOOL LEAVERS TO RECEIVE GOVS

From Front Page

Minister of Education, Science and Technology, Prof. M. Kapembwa, yesterday announced that the Government will award 140 school leavers with grade 12 certificates.

The award will be given to 140 school leavers who have completed grade 12 but have not received their certificates. The award will be given to 140 school leavers who have completed grade 12 but have not received their certificates.

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guards the lives of the residents. After all when disaster strikes, it is the same city fathers who are expected to put in place logistics, such as tents, food and medicines for the displaced persons.

They say prevention is better than cure - and that is what the Kiwe City Council is attempting to do.

The affected residents at Mulenga township would do well to cooperate with the council and move to the designated sites without further delays.

It is indeed in their interest that they move or risk their shacks being washed away by torrents and even lose lives.

The council on its part, while justifiable in its action, was probably misguided to choose such an awkward time of the year to carry out the demolition when the rainy season is near.

There was an element of malice and a high degree of impunity by the authorities who could so easily have undertaken the task in the dry season so that those displaced could have ample time to erect structures at the new sites.

We hope the civic leaders will swiftly apply the same enthusiasm they have exhibited in demolishing the shanty houses in other areas of sanitation such as garbage collection in markets and townships to keep cholera at bay.

They said the market levy of K500 from each trader, but did not want to repair the market. One of the marketeers Ms Esther Nkosi still shaken said the area Member of Parliament Reverend Peter Chintala had been informed of the danger the market posed to the people.

"Please let Rev Chintala see what has happened now because we told him about this," she said.

Mr Mukonda said area councillor John Chamusca was also aware of the problem.



MATATA

Chiluba honours fallen heroes

By Times Reporter
PRESIDENT Chiluba yesterday laid wreaths in honour of fallen heroes in the First and Second World wars at the cenotaph in Matalaka.

The solemn occasion was also attended by scores of members of diplomatic corps and security chiefs.

Mr Chiluba greeted some of the surviving ex-

servicemen, high commissioners and ambassadors before leaving the cenotaph.

And Zambia's first Inspector General of police, Michael Matalaka, said the fact that Zambia every year commemorated the scores of members of diplomatic corps and security chiefs.

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Blair wants to turn Britain into a gay kingdom - Mugabe

DURBAN, Sunday

ZIMBABWEAN President, Robert Mugabe, has accused Prime Minister Tony Blair, of turning Britain into a "United gay Kingdom."

In a blistering comments delivered to international and local journalists covering the 50th Commonwealth heads of government meeting (CHOGM) in Durban, the Zimbabwean leader also accused the British prime minister of using "gangster gays" to persecute him.

Mugabe was referring to an incident last week when a gay activist, Peter Tschell, attempted

to persecute him. Mugabe was referring to an incident last week when a gay activist, Peter Tschell, attempted

sexualls in his cabinet... If Tony Blair wants to turn Britain into a United Gay Kingdom, that is a matter for him but he should not go around lecturing other countries. People in Zimbabwe are shocked by attitudes towards homosexuals in Britain," said the 75-year-old Mugabe.

Mugabe's attack on a fellow head of government appears to be highly embarrassing for South Africa as a host country. South Africa is regarded by many as having the most "gay friendly" constitution in the world and has received applications for political asylum from gay men from

other countries. President Mugabe also said he believed his country's human rights record was actually far much better than that of Britain.

But Blair's official spokesman, Alistair Campbell, has described as a "joke" accusations levelled against his boss. Campbell, responding to the accusations, said he treated Mugabe's comments as a joke.

"The prime minister is not a gay gangster." He added that while relations with Zimbabwe were good, Blair would not go out of his way to

the police's attention the He further told the accountable for the one collected from the car to run the post if they maintain public trust.

Mr Sazamhile who was once Kitiwe City Clerk

Others who laid wreaths were the city chaplain, the deputy mayor, councilors, council officials and MMD district leaders.

No one attended the ceremony from the opposition parties in the district.

Minister Mulanda officiated ceremony where vicemen laid wreath the cenotaph ne civic center. (See on page three)

President Mugabe's blistering outburst came after the British premier announced his country spends some \$38 million in Southern Africa including funding for AIDS vaccine. Zimbabwean Minister of Foreign Affairs, Mthembu, said the report was based on research conducted in Zimbabwe. He said that while relations with Zimbabwe were good, Blair would not go out of his way to

ZAMBIA'S ACCEPTED CIRCULATION DAILY
WEEKEND EDITION

Fertman denies sodomy charge

By Amos Malupanga

THE 59-year-old German charged with sodomy yesterday appeared before a magistrate's court and denied the charge against him.

Walter Ratke, a coopersmith of house number 10, Bishop's Road in Kabuliwaga, appeared before acting principal resident magistrate Mukuka Muliabaka.

He is alleged to had, on December 10 this year in Lusaka, carnal knowledge of Joseph Phiri against the order of nature.

Phiri is Ratke's security guard. Magistrate Muliabaka adjourned the matter to January 10 for trial.

Ratke is being defended by Kelvin Hang'andu of Central Chambers.

2 Tanzanians charged with theft discharged

By Lisell Kayumba

A magistrate's court yesterday discharged two Tanzanian nationals alleged to have broken into a motel room and stolen K20 million cash after the prosecution failed to bring witnesses.

Harris Musa Mwamba and George Washington Muhile, both businessmen, were alleged to have stolen the money from room 14 at Kapoche Motel on September 15, this year.

The prosecutor applied for the withdrawal of



AMERICAN EMBASSY AUCTION SALE BY FREDJOE LIMITED

THE LEADERS IN RELIABILITY

DATE: Saturday 18th December, 1999

TIME: 10:00 HOURS

VENUE: Fredjoe's premises Garden Road, off Manchichi Road, Garden compound.

VIEWING DAY: Friday 17th December, 1999, at Plot 29B along Leopards Hill- for containers only and the rest at Fredjoe.

DEPOSIT: Only K500,000 cash refundable if you comply with our conditions.

PAYMENTS: Strictly cash only payable to Fredjoe's cashiers, not later than Tuesday 21st December 1999. All items will be sold "as where is basis" with no guarantee or warrant as to condition or serviceability, we shall not be responsible for VAT AND CUSTOMS DUTY on any of the items.

To be auctioned will include the following :-

2 x 20 foot containers at Fredjoe's premises household furniture in quantities:- Dining Room Sets, with China Cabinets, Lounge suites, Fridges, Freezers, Stoves, Beds and Mattresses, Dressers, Mirrors, Bedroom Furniture, Bookcases, Washing Machines, Dryers, Carpets, Microwaves Lamps, Air conditioners and Miscellaneous items. Too numerous to itemise.

Contact Fredjoe limited on TEL/FAX: 239108 /115AKA

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