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Religious Freedom v Minority Rights  
10<sup>th</sup> April, 2019 16:00- 17:30

Human Rights in the face of Religious Liberty  
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- I. Human Rights are entitlements and freedoms that every individual has by virtue of simply being human. Article 1 of the Universal Declaration of Human Rights (UDHR) affirms this principle and states that “*All human beings are born free and equal in dignity and rights*” This pronouncement and principle in the UDHR is the umbrella for the enjoyment, protection and fulfilment of all human rights. Article 2 of the UDHR proclaims “*Everyone is entitled to the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, color, sex, language, language, religion, political or other opinion, national or social origin, property, birth or other status*”. In essence, the UDHR proclaims the foundation for the enjoyment of all human rights and this is the principle of equality and non-discrimination<sup>1</sup>.
- II. The population of Zambia is at an estimated number of 15.9 million (July 2017 estimate<sup>2</sup>). 95.5% of the country is Christian: 73 percent identify as Protestant and 20.2 percent as Roman Catholics. Among Protestants, the Anglican Church and Evangelical and Pentecostal groups have the largest number of adherents. Approximately 2 percent of the population is Muslim, with smaller number of Hindus, Baha’is, Buddhists, Jews and Sikhs. Approximately 1.8 percent of the population adheres to their belief systems, including indigenous religions and witchcraft, and there are small communities that hold no religious beliefs.
- III. On 29<sup>th</sup> December 1991, President Frederick J.T Chiluba, an evangelical, declared his country a Christian nation. He also published a book glorifying democracy. Many churches denounced his declaration at the time it was made. But politics in Zambia has not fallen into the pattern of one party, which supports the Christian nation, contesting with another party, which opposes it<sup>3</sup>. Zambian politics has come increasingly to be played out between supporters of the Christian nation.
- IV. Arguably, the declaration promotes the fundamental right to freedom of worship as enshrined under Part III of the Zambian Constitution, which guarantees the right to worship<sup>4</sup> or express one’s religious faith subject to the general restrictions based on good or public interest.
- V. The Preamble to the Constitution expressly acknowledges the supremacy of God Almighty and declares the Republic a Christian Nation while upholding individual freedom to conscience, belief or religion. The regard for other religious faiths is also enshrined under Article 4 (3) by describing the nation as multi-religious, democratic state.
- VI. The declaration of the state as a Christian one took another step at a church gathering on 28<sup>th</sup> August, 2016 where His Excellency President Edgar C. Lungu announced his government’s plan to set up a government ministry termed ‘Ministry of Religious Affairs.’ Despite reservations from some sections of society as to its significance in national affairs, the government went on to appoint prominent pastor, Godfridah Sumaili as its first cabinet minister. Parliament unanimously approved the creation of a Ministry of National Guidance and Religious Affairs.

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<sup>1</sup> The Right to Equality and Non-discrimination on basis of sexual orientation and gender identity in Zambia (Panos 2014)

<sup>2</sup> Zambia 2017 International Religious Freedom Report

<sup>3</sup> Journal of Religion in Africa, Vol 33. Fasc. 4, Expressions of Christianity in Zambia (Nov., 2003), pp. 401

<sup>4</sup> Constitution Amendment Bill No. 37 2016. 20 (1) and (2)

- VII. Through examining media publications, attitudes and practice of service providers and responses by state actors, the paper endeavors to provide insight into the lived realities of gender<sup>5</sup> minorities in Zambia in relation to religious interpretations and publically held moral beliefs. In the National AIDS Strategic Framework (NASF) 2017-2021, reference is made to key populations<sup>6</sup> as defined by Zambia, to include Transgender<sup>7</sup> persons.
- VIII. Legally and culturally, Zambia does not recognize Transgender and Intersex<sup>8</sup> persons. The Laws of Zambia are silent on the issue of variant gender identity and the Government has no official position on the matter. However, because Zambian Law criminalizes homosexuality and Zambian cultural attitudes are decisively homophobic and stringently heteronormative, Transgender and Intersex individuals face legal risks, stigma, and pressure to conform to normative behavior. Criminalization of homosexuality is a liability for many Transgender and intersex individuals who – although they may not personally identify as gay or lesbian – are often misperceived to be homosexual. For example, a transgender woman in a sexual relationship with a man may not face prosecution for being transgender, but is at risk of being penalized for same sex acts (punishable for a minimum of 14 years in prison) because the state does not recognize her as a woman.
- IX. A number of laws and regulations present obstacles for Transgender and Intersex people in Zambia. Cap 87, section 155 of the Penal Code under the heading ‘unnatural offences’, refers to ‘*any person who has carnal knowledge of any person against the order of nature or who has carnal knowledge of an animal*’. Punishment for such offences as these ranges from 15 years to life imprisonment.

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<sup>5</sup> The term ‘gender’ refers to the behaviour, activities, and attributes that a particular society claim men and women should have. ‘Gender’ is a specific social construct – every society teaches children and adults what it means ‘to be a man’ or ‘to be a woman’ in that society (Anova Health Institute, 2016). And, although most societies distinguish between two genders, corresponding to the understanding by those societies and their construction of biological sex, some societies recognize other gender possibilities (World Health Organization [WHO], 2015).

<sup>6</sup> Key populations are defined groups who, due to specific higher-risk behaviors, are at increased risk of HIV irrespective of the epidemic type or local context. Also, they often have legal and social issues related to their behaviors that increase vulnerability to HIV. These guidelines focus on five key populations; 1) men who have sex with men, 2) people who inject drugs, 3) people in prisons and other closed settings, 4) sex workers and 5) transgender people (Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations-2016 update). (Geneva: World Health Organization; 2016. Definitions of key terms.)

<sup>7</sup> An umbrella term for people whose gender identity and expression do not conform to the norms and expectations traditionally associated with the sex assigned to them at birth. It includes people who are transsexual, transgender or otherwise gender non-conforming. Transgender people may self-identify as transgender, female, male, transwoman or transman, trans-sexual or one of many other transgender identities. They may express their genders in a variety of masculine, feminine and/or androgynous ways

<sup>8</sup> A term referring to a variety of conditions (genetic, physiological or anatomical) in which a person’s sexual and/or reproductive features and organs do not conform to dominant and typical definitions of ‘female’ or ‘male’. Such diversity in sex characteristics is also referred to as ‘biological variance’ – a term which risks reinforcing pathologising treatment of differences among individuals, but which is used with caution in this document to indicate an inclusive grouping of diversity in sex characteristics, including, but not limited to, intersex individuals. Also referred to as Disorder of Sex development (DSD)

- X. Additionally, section 158 criminalizes 'indecent practices' between persons of the same sex. Penalty of 7 to 14 years imprisonment.
- XI. Transgender and Intersex persons are clustered with LGB persons by the Zambian public as one group without consideration of the differences at play in respect to identity and orientation, let alone how one expresses in relation to their own perception of their gender identity.
- XII. Since the law informs policy- which means interventions are often tailored within the confines of the law- the prohibitive nature of Zambia's laws seems to influence programming. That said, inclusion of Transgender in the NASF 2017-2021 provides for implementation of interventions centered on the national HIV response and not the well-being and self-actualization of Transgender and Intersex individuals with a transitioning factor.
- XIII. Ironically, Transgender and Intersex persons have no access to legal representation which adds to the bias that results in Transgender and Intersex people barely escaping acquittal should they be on trial for the crime of an unnatural offence. This paper also identified that Transgender and Intersex persons do not actively report cases of violation to the police for fear that they may be detained or incarcerated for their real or perceived sexual orientation and or gender identity. Furthermore, Transgender and Intersex people do not actively seek health services for fear of discrimination, and if they do however seek health services, they do not reveal their orientation and or identity to the health care providers they seek medical attention from<sup>9</sup>.
- XIV. Although there have been attempts by the National HIV/AIDS Council towards addressing and inclusion of Transgender health needs through the documents such as the Consolidate Guidelines on HIV Prevention, Treatment of HIV infection, Transgender persons cannot confidently approach health institutions for procedures such as HIV counselling and testing, STI screening, and access to general health services. This has also been alluded to the fact that the health needs of Transgender and Intersex persons goes beyond mere HIV testing, treatment and care; the needs of Transgender and Intersex communities require Comprehensive Gender-affirming Sexual and Reproductive Health services with emphasis of a Rights-based approach to service provision.

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<sup>9</sup> Knowledge Attitude and Practice Study (Transbantu Association Zambia 2014)

- XV. Health care providers hold reservations towards Transgender and Intersex persons stemming from a lack of comprehensive training as training curriculum does not provide for holistic approaches for gender variant Zambians. In addition, Zambia does not currently have standard management protocols or an adopted standard of care to provide comprehensive care to Transgender and Intersex persons. Health care providers hold cultural and religious beliefs that prevent most of them from providing services free of prejudice; this coupled with the fear of going against the laws of Zambia prevent objectivity.
- XVI. Youth-friendly corners at local clinics are not diverse and inclusive in their approach to be able to accommodate persons of diverse gender identity, nor do they have the capacity to ensure that people born with disorder of sex development are assimilated into youth programmes and services owing to a lack of acceptable and efficient training curriculum.
- XVII. The Zambian Constitution may be said to be a fountain of hope for the protection and enforcement of human rights in Zambia. Leaning heavily on the enforcement and protective provisions of the Constitution<sup>10</sup>, any person who alleges an actual or imminent violation of their rights may seek redress through the High Court. No person or authority is above the Constitution. The enforcement of human rights is, therefore, dependent on the sanctity of the Bill of Rights in the Constitution. Other institutions have been established specifically to help in the recognition, promotion, realization and enforcement of fundamental human rights and freedoms.
- XVIII. The Human Rights Commission is an autonomous body established by the Constitution<sup>11</sup>. The Human Rights Commission Act, chapter 48 of the Laws of Zambia, governs the Human Rights Commission. Section 3 of the Act equally guarantees the autonomy of the Commission and states that the Commission shall not, in the performance of its duties, be subject to the direction or control of any person or authority.
- XIX. The Constitution defines and provides for the recognition and enforcement of fundamental human rights and freedoms. Specifically, article 11 of the Constitution provides as follows: It is recognized and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, color, creed, sex or marital status, but subject to the limitations contained in this part, to each and all of the following, namely:
- (a) life, liberty, security of the person and the protection of the law;
  - (b) freedom of conscience, expression, assembly, movement and association;
  - (c) protection of young persons from exploitation;
  - (d) protection for the privacy of his home and other property and from deprivation of property without compensation; and the provisions of this part shall have effect for the purpose of affording

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<sup>10</sup> Art 28 of the Constitution

<sup>11</sup> Art 125 establishes the Human Rights Commission and guarantees its autonomy

protection to those rights and freedoms subject to such limitations of that protection as are contained in this part, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Apart from the provisions relating to the right to life, the protection from slavery and forced labor, the protection from inhuman treatment and the provisions to secure the protection of the law, the other fundamental provisions may be derogated from in accordance with the provisions of the law in order to deal with the situation at hand<sup>12</sup>. The enforcement of fundamental rights and freedoms is made possible by article 28 of the Constitution<sup>13</sup>

- XX. Transgender people experience high vulnerability to violence. Transgender persons are likely to face gender-based violence because either they defy gender norms. Transgender persons face harassment and abuse not only from police but from private individuals. Indeed, transgender people have been subjected to harassment, physical violence, sexual violence and even murder<sup>14</sup>. Due to their vulnerability and experience of police abuse, transgender persons are less likely to approach law enforcement or health services for necessary assistance. Similarly, criminal laws leave sex workers vulnerable to abuse and

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<sup>12</sup> Art 25 of the Constitution provides that '[n]othing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of articles 13, 16, 17, 19, 20, 21, 22, 23 or 24 to the extent that it is shown that the law in question authorizes the taking, during any period when the Republic is at war or when a declaration under article 30 is in force, of measures for the purpose of dealing with any situation existing or arising during that period; and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions if it is shown that the measures taken were, having due regard to the circumstances prevailing at the time, reasonably required for the purpose of dealing with the situation in question'

<sup>13</sup> Art 28 of the Constitution of Zambia provides: '(1) Subject to clause (5), if any person alleges that any of the provisions of articles 11 to 26 inclusive has been (protective provisions), is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply for redress to the High Court which shall: (a) hear and determine any such application; (b) determine any question arising in the case of any person which is referred to it in pursuance of clause (2); and which may make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of articles 11 to 26 inclusive. (2)(a) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of Articles 11 to 26 inclusive, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion the raising of the question is merely frivolous or vexatious. (b) Any person aggrieved by any determination of the High Court under this Article may appeal therefrom to the Supreme Court: Provided that an appeal shall not lie from a determination of the High Court dismissing an application on the ground that it is frivolous and vexatious. (3) An application shall not be brought under clause (1) on the grounds that the provisions of articles 11 to 26 (inclusive) are likely to be contravened by reason of proposals contained in any bill which, at the date of the application, has not become a law. (4) Parliament may confer upon the Supreme Court or High Court such jurisdiction or powers in addition to those conferred by this article as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this article or of enabling any application for redress to be more speedily determined.'

<sup>14</sup> UNAIDS Regional Synthesis

violence from police and private individuals. Sex workers in Southern Africa have reported a fear of and routine police abuse including sexual violence and beatings<sup>15</sup>.

- XXI. The lack of a protective legal and policy environment is a significant obstacle to Transgender persons' ability to access services. As of 2015, approximately half of SADC Member States have specific laws criminalizing consensual, same-sex relationships between adults and some aspect of sex work<sup>16</sup>. Unfortunately Transgender identities have not been understood by Zambia in particular, and continue to be viewed as homosexual. These punitive laws can also make healthcare providers more reluctant to treat sex workers and Transgender people as they fear being seen as condoning illegal behaviour.
- XXII. Zambia is signatory to International Covenant on Economic, Social and Cultural Rights (ICESCR) 10<sup>th</sup> April, 1984, International Covenant on Cultural and Political Rights (ICCPR) 10<sup>th</sup> April, 1984, Optional Protocol of the International Covenant on Civil and Political Rights 10<sup>th</sup> April, 1984. Signature of a treaty is an act by which a state provides preliminary endorsement of an argument. Signing does not create a binding legal obligation but demonstrates a state's intent to examine the agreement and consider ratifying it. Signing does not commit a state to ratification, it does however oblige the state to refrain from acts which or that would defeat/ undermine the treaty's objective and purpose.
- XXIII. We have seen that the right to religion or freedom of conscience and its enjoyment are fundamental. It is enshrined in the Constitution of Zambia. We have equally seen how the right has made its way into acts of parliament. It cannot therefore be denied that this right is provided for adequately. However, the full enjoyment of the right is not the same as guaranteeing it in legislation. Similarly, the preferential treatment of one religion may interfere with the rights of another minority. In Zambia, the Constitution begins with a statement preferring one religion. The Preamble reads: 'We the people of Zambia ... declare the Republic a Christian nation while upholding the right of every person to enjoy that person's freedom of conscience and religion.' The National Constitutional Conference has also repeated this Preamble provision in the draft Constitution.

### Access to health care

- XXIV. THE **Sunday Mail** yesterday (November 19, 2017) published a story which exposed a high-level three-day regional meeting which was held in Lusaka recently to look at healthcare access for lesbians, gays, transgender and intersexuals (LGBTIs).

The clandestine meeting, which is said to have been organised by Southern Africa HIV AND AIDS Information Dissemination Service (SAfAIDS), had representation from Plan International Zambia, Friends of RAINKA, University of Maryland Zambia, Hivos Southern

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<sup>15</sup> Open Society Foundations, Criminalizing condoms. How policing practices puts sex workers and HIV services at Risk in Kenya, Namibia, Russia, South Africa, the United States and Zimbabwe (2012)

<sup>16</sup> National Geographic. Map Shows Where Being LGBT Can Be Punishable by Law (16 June 2016), available at <http://news.nationalgeographic.com/2016/06/lgbt-laws-gay-rights-world-map/> (last accessed 22 September 2017). Malone, K. Sex Work in the SADC Region: The Importance of Creating a Framework to Protect Sex Workers from HIV and Human Rights Abuses. Masters Thesis (Spring 2010). Overs, C. "Sex Workers' Rights: Mapping Policy Around the World" The Guardian (15 Sept 2015). Sexuality, Poverty and Law Programme. Map of Sex Work Law available at <http://spl.ids.ac.uk/sexworklaw>.

Africa and Trans Bantu Zambia (TBZ).

The meeting was attended by representatives from Malawi, Zambia, Zimbabwe, South Africa, Lesotho, Swaziland, Namibia and Botswana.

It is odd that in Zambia a Saturday clinic has been set in some hospitals to specifically attend to LGBTIs.

According to a Zambian participant, this is a concept borrowed from South Africa's Out Clinic.

"We have noticed that by having a Saturday Clinic, the key populations will receive less stigma and discrimination. By the way, those that operate the Saturday clinic are our friendly forces.

"We have the numbers of those health workers that can attend to you during the Saturday Clinic, we have someone at the University Teaching Hospital and other clinics dotted around Lusaka," a Zambian participant said.

What is odd and deeply saddening is that while homosexuality is illegal in Zambia, there are people working underground to promote this illegality.

We are more concerned that not too long ago there was a similar meeting exposed in Livingstone.

These revelations need serious attention by relevant authorities as they are evidently just a tip of the ice berg.

It is becoming clearer that there is much more happening in dark corners than meets the eye.

It is disappointing that some of Zambia's non-governmental organisations seem to be working underground to entrench illegality.

We expect NGOs to be transparent on what they do and ensure that their operations are not in conflict with the law or could threaten law and order.

Some of these NGOs could be receiving huge funding to promote an illegality. Money should not be the overarching reason for supporting other people's agenda.

The Zambian laws, in particular Cap 87, section 155 through to 157 of the Penal Code, forbid homosexuality.

Section 155, for instance, provides that: "Any person who – (a) has carnal knowledge of any person against the order of nature; or ... (c) permits a male 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."

Section 156 imposes imprisonment for seven years for any "attempt to commit unnatural offences". Section 157 applies to "any act of gross indecency" committed between males, "whether in public or in private", and classifies such acts as felonies punishable by imprisonment for five years. The provision also extends to "attempts to procure the commission of any such act (of gross indecency)".

It is, therefore, a serious abrogation of the law for anyone to promote homosexuality in Zambia.

Besides, Zambia being a Christian nation is guided by biblical principles which forbid homosexuality.

For instance, Leviticus 20:13 says, "If a man has sexual relations with a man as one does with a woman, both of them have done what is detestable. They are to be put to death; their blood will be on their own heads.

The Zambian government, the church, traditional leaders and the general citizenry have in tandem with the law and biblical principles taken a stance that homosexuality is alien and a threat to public morality.

This is the stance that President Lungu has taken. When he was Minister of Home Affairs, he reacted to a Human Rights Watch report on the high-handed manner in which gay suspects



were treated by asserting that there would be no room for negotiation. He said: "There will be no discussion on gay rights. That issue is foreign to this country."

As an aspiring presidential candidate in 2014, Mr Lungu is also on record to have stated: "We will not support homosexuality. I will not compromise human nature because of money."

This is the position the country still stands by.

We are disappointed that some NGOs are going behind Government's back to get money to promote homosexuality.

These NGOs should remember that no amount of money is worth a life that is polluted through their campaigns, and posterity will certainly judge them harshly.

What is odd too is that those promoting homosexuality are seeking special or separate treatment. Why?

Zambia's health institutions provide services to anyone in need of health care. There is no provision for separate or special attention for those who go against the order of nature. Considering that these activities are illegal, we expect the law enforcers to move in and clamp them down, including those using public institutions like the UTH to provide special services.

Zambians should work together to guard against alien vices, coated as rights, that are being pushed down their throats.

### **Transgender woman thrown out of Church**

XXV. Chilufya Tayali has sprung to the defense of a 'transgendered' MMD cadre who was ejected from the Anglican Cathedral of Holy Cross by police officers for wearing women's clothing during the 10th memorial service of president Levy Mwanawasa on Sunday.

The opposition EEP leader believes the time has come for the country to officially recognize the third gender as it is part of nature.

Miyanda, a well-known member of the MMD women's choir, had arrived at the Cathedral dressed in women's clothing complete with headgear, facial makeup, high heels and a purse.

But police fished Miyanda out of the gathering stripped him of his dress and ordered him to leave the premises dressed only in body-hugging short shorts and a body top.

Before being ejected from the Cathedral, Miyanda was subjected to a humiliating body search by police to confirm that he was indeed male and Tayali believes his rights were violated.

"Miyanda is my friend and his rights are being abused. We need to recognise the third gender, because it is nature, this guy has done nothing wrong," Tayali wrote on his Facebook page.

"I am going to defend the Human rights of Miyanda because he has done nothing wrong, he was born like that. I have known this she-guy for some time and I can tell you that, though he has a penis, the fellow is a full-time woman."

Tayali argued that Miyanda, who easily passes for a woman due to his feminine features, mannerisms and dress sense, was born that way.

“Miyanda did not create himself to be the way he is, such that he the voices comes out female. His gestures and his face show clearly that, he is not male, though they fixed a penis on him instead of the other thing.

“I know with this Christian Nation issue, we want to claim to be holier than thou, but in our Christianity we should be aware that, at times there are manufacturer problems which we can't fix, but accept.”

The opposition leader vowed to defend the rights of the minority in Zambia.

“I know many of you will throw stones at me, but I have no shame or fear to defend the rights of the minority in this Country, because they were created that way.

“Please I am not defending homosexuality, because that is another issue all together, though it comes in because, if we go further we would ask how these people will enjoy sex as we do.

“I don't have all the answers, which is why I think we all need education on this topic, but certainly to treat Miyanda in the manner he was treated by the Police at the Cathedral yesterday, it was very wrong. His rights were abused and I stand with him.

“Please if you have his number send it to me, I would like to go and see him, because he is a friend and I understand him,” Tayali said.

Miyanda has been a member of the MMD women's choir since the Mwanawasa days and many including his fellow choir members have accepted him the way he is.

### **Fake woman convicted of sodomy**

XXVI. A 27-YEAR-OLD male hair-dresser who had been posing as a woman now faces 15 years in prison after a Mongu magistrate court convicted him of sodomy<sup>17</sup>.

The court has committed Hatch Bril of Mongu's St Johns area to the High Court for sentencing.

Bril, who appeared uneasy during the one hour and 14 minutes judgment, was sued by a 19-year-old taxi driver whom he allegedly permitted to have carnal knowledge with against the order of nature.

The incident occurred on September 24, 2015 around 02:00 hours.

The court heard that Bril deceived the teenager in what was love at first sight in a bar as he was dressed and appeared like a woman on the material day.

Magistrate Derrick Mate Chingumbe said he had no doubt that Bril committed the offence

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<sup>17</sup> Zambia Daily Mail (Oct 31<sup>st</sup>, 2015)

because the evidence given by the teenager to court was overwhelming. He said the complainant had proved that Bril had allowed him to have carnal knowledge of him, contrary to the convicts defense that he was forced into the act. The parked courtroom further heard that the teenager told the court that Bril asked him to turn off the lights before the two engaged in the act. This was after he proposed love to her after a drink-up at a night club. Mr Chingumbe said the medical report compiled at Lewanika General Hospital indicated that the incident was against the order of nature as Bril had a tear around his anal area. Cases such as this one require one to prove whether the accused person did actually permit the other to have carnal knowledge of him, or indeed, if the act was against the order of nature. Well, after looking at the evidence on record from the six witnesses that the prosecutors presented, I have concluded that Bril did actually permit the taxi driver to have carnal knowledge of him. In fact, he was made to believe that he was actually going to sleep with a woman and a woman only because of the way he [Bril] was dressed, and he had long hair” Mr Chingumbe said. He granted Bril the right to appeal to the High Court. The minimum sentence for sodomy is 15 years.

#### **IAAF ban Zambian sprinter**

XXVII. THE International Association of Athletics Federations (IAAF) has handed Zambia’s decorated female athlete Kabange Mupopo a four-year ban for doping. But Zambia Amateur Athletics Association insists that the alleged doping was caused by hormonal imbalances. According to the latest sanctions for doping and non-doping violations list from the Athletic Integrity Unit, Mupopo tested positive to substance abuse and has therefore been put on a four-year ineligibility mode effective August 6, 2017.

But ZAAA president Elias Mpondela said there have been differences between his organisation and IAAF over Mupopo’s alleged doping.

He said Mupopo had imbalances in her hormones.

“We have had some controversy on the understanding on this matter with those people. From the medical results that we got from UTH, it was as a result of hormone imbalance. It’s not news to us, we have been talking about this, we have been involved in this issue for the past year. We have been talking with those people and we presented a counter, we said whatever they are talking about was caused but hormone imbalance...that’s the presentation we gave and they are yet to tell us what it is. It affects us, that is our iconic athlete. We have had a disagreement between their presentation and ours. Ours we are saying it’s hormone imbalance, maybe we failed to prove to them the hormone imbalance aspect. Naturally it affects us very much,” said Mpondela.

Mupopo, a Zambia Army officer, is also a football player who won gold in the 2015 African games. She also represented Zambia at the 2014 Commonwealth games in Glasgow where she clocked 50:09 but was unfortunately eliminated in the semi-finals.

She is also a silver medalist in the African championships held in Marrakech where she broke the Zambian record. Mupopo also qualified to represent Africa at the 2014 IAAF Continental Cup, also in Marrakech, where she finished fourth and improved her national record to 50.87.

Mupopo received an 18-month athletics scholarship from the Zambia Olympic Committee in 2015, leading her to concentrate on athletics and not football.

## **Conclusion**

- XXVIII. Generally, two trends with regard to minority rights can be observed. On the one hand, in many countries, a comprehensive system of the legal protection of minorities has been introduced. Here the biggest problems stem from the difference between formal and informal rights. On the other hand, a number of countries have not legally committed themselves to the protection of minorities; ranging from inadequate safeguards to non-recognition of the minority. National minorities have received broad, although not well-differentiated, reporting in the media and attention and its impact on the discourse on human rights have been minimal.
- XXIX. Law, religion and human rights are three areas that may be said to be fused. It may even be difficult to attempt to draw a line between what is law, what is religion and what is human rights. Human rights are inalienable and inherent by virtue of one being human. Law and religion should leave room for human rights, which are universal and recognize no borders. In more instances than not, these three areas correlate. The practices in Zambia should not be viewed in isolation from those which obtain in other countries, particularly in Central and Southern
- XXX. Africa, and in those countries that are former British colonies. Even a historic perspective on how religion, especially Christianity, was brought to this region by European missionaries like David Livingstone, is almost the same. In all of these countries, law, religion and human rights depend on the supremacy of the constitutions and written law to thrive. There is, one might say, a great deal of freedom of conscience in Zambia. Controls exist as would reasonably be expected in a democratic society. But, by and large, law, religion and human rights in Zambia exist side by side with a few marginal incidences of the violation of the right to religion.
- XXXI. The state must make amendments to law and policies to include the rights of Transgender and intersex individuals in the realization of their Basic Rights and access to Primary health care services indiscriminately as the rest of the citizenry.

- XXXII. Agreeably, Transgender and Intersex persons who come in conflict of the law are to be tried in the Courts of Law, however provisions must necessitate legal representation for Transgender and intersex people for equitable access to justice.
- XXXIII. The Yogyakarta Principles set standards and principles that provide Universal guidance on the application of international human rights law in relation to gender identity. Although not legally binding, they have been universally accepted under the United Nations human rights system as a guide for states. For example, General Comment 20 of the Committee on Economic Social and Cultural Rights referred to the Yogyakarta Principles as a guide for state parties in their obligations under the ICESCR in the context of sexual orientation and gender identity.
- XXXIV. The Principles were developed and adopted in November 2006. In that year, a group of human rights experts, including United Nations experts, members of human rights treaty bodies, judges, academics and human rights defenders, met in Yogyakarta, Indonesia. They developed the Principles drawing from the standards of international and regional human rights treaties. The Principles therefore address a broad range of human rights standards and their application to issues of sexual orientation and gender identity. Each Principle is accompanied by detailed recommendations to states. For example, Principle 1 and 2 relate to the universal enjoyment of human rights and the right to equality and non-discrimination respectively.
- XXXV. In the face of Religious Liberty, Zambia must not relent to hasten the acceleration of the recognition of Human Rights entitled to all citizenry irrespective of race, sex, ethnicity and any other cast including gender for effective implementation of interventions such as access to National identity cards/ documents, sexual and reproductive health and rights with emphasis on mental health and well-being for the self-actualization of Transgender and Intersex communities in Zambia. This ultimately will lead to the contribution from Transgender and Intersex persons to development in Zambia.