

WAGENINGEN UR

**Exploring discourses and actions of ‘othering’ homosexual citizens by officers of the Zambia Police service in Lusaka, Zambia.**



A research project submitted to Van-Hall Larenstein University of Applied Sciences in partial fulfilment of the requirements for the Degree of Master of Management of Development specialization Rural Development and HIV/AIDS.

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**Acronyms**

AIDS: Acquired Immunodeficiency Syndrome

ARV: Antiretroviral

HIV: Human Immunodeficiency Virus

VCT: Voluntary Counselling and Testing

LGBT: Lesbians, Gays, Bisexual and Transgender



**Abstract**

This study investigated the relationship between the law enforcement activities of police officers against the socially marginalised groups and the ensuing social exclusion mechanisms. The argument that formed the basis of the study is the current debate which is pertaining in Zambia about homosexuality that seeks to classify homosexual persons against the conservative perspectives of sexuality. These perspectives have vilified homosexual persons, making them vulnerable to mechanisms of social exclusion which may deny them access to social basic needs, including health services, heightening their susceptibility to diseases and HIV.

Data collection involved a desk research of existing literature and interviews of Twenty five police officers from Lusaka, Zambia. The study explored the perceptions and actions of the officers towards homosexuality and/or homosexual persons as factors of social exclusion mechanisms.

Police officers were found to be prejudicial when dealing with cases bordering on homosexuality or homosexual persons. The study further reviewed that some police officers are homophobic and consider homosexuality as a sinful, deliberate act by citizens who want to emulate the western lifestyle. No significant relationship was found between the prevalence of homosexuality as a crime in the Zambian society and the unprecedented media publicity and police response it receives.

## **Chapter 1: Introduction**

### **1.0 The framing of homosexuality as a major issue of concern in Zambia**

#### **1.1 The Zambian context**

Zambia is a landlocked southern African nation that borders Angola, the Democratic Republic of the Congo, Tanzania, Malawi, Mozambique, Zimbabwe, Botswana, and Namibia. In 2013, the population of Zambia is estimated at 14 377 117 (Country Metres, 2013). 36% of the population is concentrated in urban areas. The majority of the population (85%) works in agriculture, while 9% works in services and 6% works in mining and manufacturing (US Department of State, 2012)

Zambia has been a democracy since its independence from Britain in 1964. The official language spoken in Zambia is English, although 73 local languages and dialects exist. Administratively, the country is divided into 10 provinces, of which only two, Lusaka and Copper-belt are predominantly urban. The legal system of the country follows the English Common Law and the local customary law.

Zambia experiences a generalised HIV/AIDS epidemic, with a national prevalence rate of about 13% among adult ages 15 to 49 years. With this high prevalence, the Government of the Republic of Zambia has prioritized the fight against HIV/AIDS on the development agenda. As a way of intervening, programs such as provision of Antiretroviral therapy (ART), Voluntary Counselling and Testing (VCT) centres and making information about HIV/AIDS available to the public have been implemented in both public and private sectors (US Department of State, 2008). Such interventions have yielded declining trends in HIV/AIDS prevalence in the recent past (PLOS, 2012). Despite all these efforts however, the HIV prevalence rate in some socially vulnerable groups may continue to be higher than the national generalised prevalence rate. This state of affairs is structured by factors such as poverty and opportunity, gender, age, ethnicity and sexuality, social relations and peer networks, and the criminalisation of certain social practices (Journal of Psychology and Human Sexuality, 2008). These factors influence the accessibility of an individual or group to basic social needs and individual rights. In the context of HIV/AIDS, these factors can operate individually or in combination to determine the extent to which an individual or group is socially included or excluded from accessing information and services that can prevent infection or mitigate the impact of HIV at individual or community levels.

Studies conducted in many countries have shown lower prevalence of HIV in the general population than in certain groups within the population, a situation called concentrated epidemics (UN AIDS/WHO, 2000). Societal groups prone to high HIV prevalence rates include sex workers, homosexual persons, injecting drug users and people who migrate to live in camps for work among others. Due to the societal tag that these groups may have, they may be alienated within the wider society through mechanisms of social exclusion. People excluded like this are ascribed little social value and may be marginalised politically, socially and economically, denying them economic and social opportunities available to others including access to good health. This influences the health seeking behaviour of the excluded people making them more susceptible to contracting diseases including HIV. In order to combat the HIV epidemic in the nation, therefore, all citizens must be allowed access to full citizenship and rights so that inclusive health policies and programmes are fostered to all.

A report by the Zambia Independent Monitoring Team stated that by 1995 1 out of 25 Zambians were homosexual (Ndhlovu, 2011). If these figures are taken as a proxy indicator of the magnitude of the homosexual community in Zambia today, socially excluding them can be an overwhelming reality. This would imply that in terms of national HIV programmes, a significant proportion of citizens will not freely access information, health services and care, and mitigation of the impacts of AIDS. The study by Carlos et al., (2012) suggests that

although progress has been achieved in some countries, the issue of social inclusion of homosexual persons remains problematic.

Predominantly Christian, Zambia was constitutionally declared a Christian nation in 1991. Although this declaration instigated public debate on its legitimacy and pertinence, it implied that Zambia would be governed on the Christian principles of the bible. Subsequent political leaders have publicly referred to this close of the constitution during public debates time and again. However, as to whether the close has been practiced as prescribed in the constitution and in true biblical sense, is a matter of public debate. Zambian people are nevertheless generally spiritual in the religious sense and this can be evidenced by so many churches that have mushroomed in the past two decades. This situation might be attributed to the first Republican President Kenneth Kaunda (president 1964 – 1991) who himself was very religious and always publicly preached about love in the biblical context. The churches are strong and have an important place in the social and political lives of the Zambian society, with the Catholic Church having the largest following (World Council of Churches, 2013). The Zambian society has sought solace in the church whenever the political systems have failed them, and the church has been instrumental in advocating for the rights of the citizens and the changes of successive governments.

Seen as the defender of the socially and economically disadvantaged members of society, the church influences public opinion of society on a range of social issues, complimenting the cultural norms and beliefs at times. As a result, much of public opinion of the Zambia society on what is 'normal' is perceived from the point of view of Christianity and the bible, to some extent shaping the definition of the Zambian culture as seen in the newspaper excerpt below:

Excerpt 1: Article on homosexuality

### **Homosexuality punishable sin**

FROM the beginning God confined Adam to Eve, intimating that the sacred bond of marriage will ever be between a man and a woman (Matthew 19:5).

The purpose of it all was to propagate their kind and the race to continue. A lot of controversy swells around homosexuality and same-sex marriage. This is a very critical element which we can't just explain away. We must unpack it because it's a fretting leprosy which is highly combustible as it is knocking at the door of our nation.

The Church is mandated to explain the trajectory and identity of Zambia because we are the light and the salt of this nation.

But the irony of it is that some people are trying to unsettle this thing, saying man is a free moral agent. They argue that the Bible is not relevant in this era. Our attention here is not on two adults of the same sex living together as a couple. But when they call that setup marriage, it becomes a very serious violation because that's a very wrong reflection. Homosexuality is sin; and sin means exactly that (Lev 20:13). This is not about people's democratic rights, but what God says, through the Bible, on this matter. This issue goes beyond morals. It's about the fate of those poor souls ensnared in homosexuality, and the Church can't afford to slumber on this. If homosexuality becomes common in Zambia, it will appear less sinful.

Therefore, we stand firm against homosexuality in this nation because it's a sheer disgrace to the people (Proverbs 14:34).

We have a continual regard to God's holy Word. By prayer we detach Zambia from this terrible sin until Jesus Christ returns. Jesus is Lord over Zambia!

**Times of Zambia [online], 8 May 2013.**

Comments such as the one above are common in Zambia and are quite influential on the public opinions of the Zambian society. For a large number of Zambians, therefore, anything that is not biblical is bad for society and is not acceptable. Myths and misconceptions such as “people living with HIV/AIDS are sinners and deserve the punishment of the resulting death” are still common, for example. Married life is socially more acceptable than a person living a ‘single life’. Divorce is considered as sin unless it is a result of infidelity (biblical). Romantic relationships should only exist between a male adult and a female adult. These are some of the public opinions that may be influenced by the church. This is not to suggest that the opposite of these examples are not common! They are common, and in some areas of the country, very common. The following excerpts attest to this:

Excerpt 2: Article on divorce

### **The cry of a child from a broken home**

DIVORCE cases in Zambia have skyrocketed, an alarming trend with daily media reports revealing the deepening crisis. The main reasons cited are unfaithfulness, drunkenness, and lack of communication, violence, finances, parental interference and early marriages. This is despite that Zambia has been declared a Christian nation for over a decade now where people are expected to abide by their vows which categorically state: ‘For better for worse, till death do us part’.

**Zambia Daily Mail [online], 5 September 2013.**

Excerpt 3: Article on gay rights

### **Gays in tight corner**

MINISTER of Home Affairs Edgar Lungu says the police should bring to book couples who attempted to register same-sex marriages with the local authority in Lusaka over Easter. On Saturday, four couples made up of four Zambian students and the men of foreign origin approached marriage registrar, Henry Kapata, trying to register their gay marriages but Mr Kapata sent them away. The couples are Ritch Hemman, 64 and George Nsama, 26, Clive Reeves, 48, and Bruce Lianda, 22, Jones MacPherson, 36, and Sylvester Sichilima 30 and Humphrey Ray, 53 and Caleb Muswema, 34. Mr Lungu said yesterday that the police should investigate the matter and establish the truth as Government does not support homosexuality.

“If the men are found to have committed any offence, action should be taken accordingly,” he said. He said it is not for him to direct the police to pursue the gay men because the officers are competent enough to discharge their duties if an offence has been committed. “It is a pity that foreigners have started bringing this thing to us now. We are on dangerous ground where people are bringing new things to us and we are watching.

“The police must do their work...same-sex marriages are not a normal thing and we do not tolerate such,” he said. The minister said Zambian law does not support same-sex marriages and it is shocking that some people can come out in the open and attempt to register an illegal practice. Mr Lungu challenged the church and community to condemn same-sex marriages and not embrace alien practices. He said gay marriages have created problems in countries where they are allowed and that Zambia is not ready for the acts.

**Zambia Daily Mail [online], 4 April 2013.**

The two excerpts above show some social activities which despite being disapproved from the point of view of the church and the Zambian culture, they are still common occurrences.

Homosexual persons in Zambia, like in most parts of the world continue to be among those groups vulnerable to social marginalisation, discrimination and exclusion. This vulnerability increases their susceptibility to many social and health problems, including HIV. The laws of Zambia prohibit same-sex sexual activities and recently the Zambian society has been advocating for stiffer penalties for anyone suspected to be practicing homosexuality. A live phone-in programme presented on Radio Phoenix, one of the leading private radio stations in Zambia, recently featured clergy men to discuss homosexuality in Zambia, and the following are some of the comments from the program:

Excerpt 4: Comments on homosexuality

‘The most appropriate way to deal with gay people was death.’ -Orthodox Bishop.

‘Defenders of the rights of homosexuals are “agents of the devil”. The Zambian government will be introducing stiffer penalties against homosexuality instead of repealing the existing laws.’- Zambian minister.

**Radio Phoenix Zambia; Let The People Talk Program 10 April 2013.**

If such comments are coming from clergy men and politicians and are spoken through the mainstream media, they are likely to stimulate the mechanisms of social exclusion processes against homosexual persons in the country.

For HIV/AIDS interventions to be successful, societies should come up with programmes that incorporate social inclusion perspective on HIV prevention and AIDS-related care. This implies the adoption of strategies that understand and confront social vulnerability of marginalised groups (Carlos et al., 2012). This is so because sexual exclusion intensifies the burden of HIV transmission and morbidity. Carlos et al., (2012) recommended five aspects of urgent need for comprehensive response to HIV epidemic as:

- Improve the understanding of the characteristics and HIV burden of sexually diverse populations.
- Creatively confront legal, social and cultural factors enhancing sexual exclusion.
- Ensure comprehensive and effective prevention services
- Offer adequate care and treatment; and
- Confront special challenges that characterize the present field.

Recently Zambia has witnessed unprecedented publicity surrounding homosexuality and ‘gay rights’ of homosexual persons. The media reports have vilified the stance that government has taken on the issue of homosexuality and local NGOs and the international community have continued to question this stance from the human rights perspective. The media excerpts below can attest to this assertion:

Excerpt 5: Article of intolerance of homosexuality in Zambia 1

**Zambia sees growing intolerance of homosexuality**

Two high-profile cases involving a suspected gay couple and a homosexual rights activist come back-to-back in Zambian courts this week raising concerns over growing homophobia. Rights activist Paul Kasonkomona, 38, returns to court Tuesday after his arrest in April for demanding that homosexuality be decriminalised in a television programme.

Zambia's laws have outlawed same-sex relationships since colonialism under Britain, and a sodomy conviction carries a 14-year prison sentence. 21-year-old barber Philip Mubiana and bricklayer James Mwape, 20, were arrested and charged with sodomy. Yet these are the first such cases in recent history in the southern African country amid an increasingly anti-gay climate.

The government's hardline stance enjoys the backing of Christian organisations. International Fellowship of Christian Churches (IFCC) president Simon Chihana said gay rights should not be allowed in Zambia. "Such acts are abomination," he said. "The government should not even think of allowing such, no matter the pressures from the international community or whoever," he added. Local media have taken up the issue and gay rights have also become a hot topic around ordinary Zambians, though the reasons for the recent crackdown are unclear.

Zambia rights activists like Andrew Ntewewe note the increased threats with concern. "From what is happening, it's clear that we are an intolerant nation to individuals with different sexual orientation," said Ntewewe, who heads the organisation Young African Leaders Initiative (YALI).

**Capital news, June 5 2013.**

Excerpt 6: Article on intolerance of homosexuality in Zambia 2

**Analysis: Zambia's 'self-indulgent' fight for gay rights**

It's been a bad few months for gay rights in Zambia, with virulent anti-gay rhetoric from public figures being matched by the arrests of a gay rights activist and two men accused of "unnatural" and illegal sex. Ironically, the negative international headlines generated by all this might force the Zambian government to rethink its views.

Meanwhile, the number of homophobic statements made by politicians and religious leaders has been on the rise. Take [this](#) from traditional leader Chief Madzimawe of the Ngoni: "It is not a culture of Zambians, Africans and Ngonis to practise homosexuality and gay people should be caged." The apparent decline of respect for gay rights in Zambia has not gone unnoticed by international civil society organisations.

"The arrest of the two men solely for their **real or perceived sexual orientation** amounts to discrimination and it is in violation of their rights to freedom of conscience, expression, and privacy," said Simeon Mwanza, Amnesty International's Zambia researcher. "**Laws criminalising homosexuality and gender identity criminalise the legitimate exercise of these human rights, which are protected in treaties ratified by Zambia, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.**"

**Daily Maverick, 10 May 2013**

The two excerpts above show examples of what has become the daily news of the mainstream media regarding the issue of homosexuality in Zambia lately. There have been public comments coming from the local NGOs and the international community that suggest that the rights of homosexual persons in Zambia today are being violated by the state through the use of the police systems. There are also suggestions that the arresting of the persons suspected to be practising homosexuality is done with impunity and without regard to the international and constitutional legal systems. The Zambian constitution does not permit same-sex sexual activities.

Same-sex sexual activities are illegal in Zambia and are a serious offence. Formerly a colony of the British Empire, Zambia inherited the laws and legal systems of its colonial master upon independence in 1964. Laws concerning Same-sex sexual activity (sodomy) have largely remained unchanged since then, and therefore the general social attitudes of society towards homosexual people are mostly negative and coloured by perceptions that homosexuality is immoral and a form of insanity (ICCPR, 2013). Even if not all homosexual persons may practise sodomy, the general perceptions of the Zambian society are that all homosexuals are sodomites and all sodomites are homosexuals. Such perceptions lead to isolation of homosexual persons in society. Already being a minority group, the homosexual community faces the challenge of being permanently socially excluded. The excerpts below bring out some of the social comments that may have a social bearing on how the Zambian society perceive homosexual persons or homosexuality as they are spoken from the podium of power and through the mainstream media:

Excerpt 7: Article on homosexuality in Zambian prisons

“The Zambia Prisons Service will not condone distribution of condoms in prisons because doing so encourages homosexuality among inmates.”

“We have an obligation to protect and promote the Republican Constitution. If we permit distribution of condoms it's like we are contradicting the provisions of the constitution which prohibit homosexuality. The prisons service is determined to prevent acts of homosexuality in prisons because it was a known fact this was one of the major drivers of HIV and AIDS.” - Commissioner, Zambia Prisons Service.

**The Post Newspaper Zambia, Sunday 25 August 2013.**

Exempt 8: Article on homosexuality and politics

“Those advocating gay rights should go to hell. That is not an issue we will tolerate. There will be no such discussion on gay rights. That issue is foreign to this country.” – Zambian Minister.

**Capital news, June 5 2013.**

The excerpts, 3 and 4 above, are statements which have been made by public figures through the mainstream media. If these statements are taken literally, they exhibit a connotation of negative perception of homosexuals by some leaders in the country. Since these individuals are supposed to be role models of the Zambian society, such statements are likely to

negatively influence the way the Zambian society perceive homosexual persons. Whether such statements are made from a well-informed point of view or not is another issue to debate. For instance, in their study on the sexual behaviour of inmates in two Australian state prisons, Butler T et. al., (2013) found no evidence that provision of condoms to prisoners increased consensual or non-consensual sexual activities. They however found that condoms were likely to be used during anal sex. If the condoms were correctly used therefore, they were likely to reduce the transmission of HIV and STIs among inmates. It is therefore important to note that pronouncements such the ones above are likely to vilify homosexual persons and may cause homosexuality to be publicly portrayed as immoral and un-African. Such mechanisms are likely to perpetuate the exclusion of homosexual persons from the wider community and therefore increase their social vulnerability.

According to the report by the Zambia Independent Monitoring Team (ZIMT), there were about 500, 000 homosexual persons in Zambia by the mid-1990s (Ndhlovu G., 2011). This was about 4.5 per cent of the total population of the country then. This author needs to warn the reader however that demographics about the homosexuals are a challenge to establish due to various factors, the major one being that most of the studies rely on self-report data. This means that people who do not want to be identified as homosexuals are not likely to participate in surveys that use self-report data and this affects the reliability of results from such surveys. However, surveys conducted in the mid and late 90s in other places have shown results not very far from the Zambian scenario. According to GALLUP (2002), a US government survey suggested that about 4 per cent of adults aged 18 – 45 years of the total population in America were homosexuals. Surveys in Britain reported that 3.6 per cent of the British population were homosexual (Johnson et al., 2002). Although these results may not be very accurate, the percentages cited in each case are a significant portion of the respective national populations. Therefore if for argument's sake we take 4 per cent of the Zambian population as a proxy indicator of the number of homosexual persons in the country, the number forms a significant group of the Zambian society vulnerable to mechanisms of social exclusion. This calls for policy makers to take notice and bring the issues of homosexual persons in Zambia on the development agenda and maybe consider the possibility of socially recognising their issues. Continuously marginalising and socially excluding homosexual persons will make a big number of the population to continue facing the challenges in accessing culturally-competent social services necessary to achieve the highest possible levels of human development.

Zambia is a state party of the International Covenant on Civil and Political Rights (ICCPR) following its accession on 10<sup>th</sup> April, 1984. The ICCPR obligates countries who have ratified the treaty to protect and preserve basic human rights such as the right to life and to human dignity, equality before the law, freedom of speech, assembly and association, religious freedom and privacy, freedom from torture, ill-treatment and arbitrary detention, gender equality, fair trial and minority rights (ACLU, 2010). This means that all the citizens in Zambia regardless of colour, age, sex, sexual orientation and creed are protected, under international law, from all the ills and vices stipulated above.



## **1.2 Problem statement**

The government of Zambia has the responsibility to protect all its citizens from all forms of criminal activities and human rights abuses through the established laws, and the Zambia Police Service is mandated to enforce these laws. The police is expected to enforce these laws fairly and firmly to all, without prejudice and in accordance with the international laws. As law enforcers, however, police officers are not exempt from the general societal feelings and prejudices against homosexuality and homosexual persons. Such perceptions may influence the way in which the police officers enforce laws when dealing with homosexual persons. Even though not supported by crime statistics the police force may embark on actions which are influenced by mainstreamed framing processes of other people, like homosexuals in the implementation of their duty. These are organisational challenges that may be explored in order to ensure social accountability by the police to the general citizenry.

The recommendation by Carlos et al., 2012 above, which is 'creatively confront legal, social and cultural factors enhancing social exclusion', formed the argument upon which this research was founded.

## **1.3 Research objective**

To explore the processes of social exclusion in line with mainstreaming processes of 'othering' by the officers of the Zambia Police Service with a focus on homosexuality, and relate perceptions of the police on homosexuality to their law enforcement activities in the context of social exclusion mechanisms

In a practical way, the research would be able to ascertain whether the officers may be contributing to heightening of susceptibility to HIV infection among homosexual persons in Zambia through their duties, according to Carlos et al., 2012.

## **1.4 Research questions**

### **1.4.1 Main questions**

The main research questions that answered the research objective were:

- I. What perceptions regarding homosexual persons prevail among the officers of the Zambia police?
- II. How do these perceptions influence the law enforcement activities of police officers?

### **1.4.2 Sub – Questions**

- I. What knowledge do officers have about the subject of homosexuality?
- II. What is the influence of this knowledge on the way officers view homosexual persons?
- III. What discourse is common among officers of the zambia police regarding homosexuality?
  
- IV. What experience do police officers have in dealing with cases involving homosexuality and/or homosexual persons?
- V. How do experiences and beliefs about homosexuality and/or homosexual persons influence the decision making process of officers in the enforcement of laws?
- VI. What professional challenges do officers face in enforcing the laws on homosexuality?

## **1.5 Definition of concepts**

### **1.5.1 Social exclusion**

*'...social exclusion is a theoretical concept, a lens through which people look at reality and not reality itself'. (de Haan, 2001:28)*

The concept of social exclusion has been widely used, especially in Europe where it has been used as a practical alternative to the conventional poverty concept. According to the Bristol Institute of Public Affairs of the University of Bristol (2007), social exclusion involves the lack or denial of resources, rights, goods and services, and the inability to participate in the normal relationships and activities, available to the majority of people in a society, whether in economic, social, cultural or political arenas. Social exclusion affects both the quality of life of individuals and the equity and cohesion of society as a whole. Social exclusion is about the inability of society to keep all groups and individuals within reach of what we expect as a society and this prevents the excluded people from realising their full potential. This view is supported by Chau and Yu (2001), who stated that the excluded groups will not only suffer from lack of material resources to maintain a decent standard of living, but they also lack sufficient rights to fully participate in society.

To further understand the research problem that formed the basis of this study, a more detailed picture of the situation is explored below.

### **1.5.2 Homosexual persons**

Homosexual persons refers to an individual having emotional, romantic or sexual attraction to members of their own sex

### **1.5.3 HIV/AIDS**

AIDS, Acquired Immunodeficiency Syndrome, is a clinical syndrome (complex collection of infections) which is caused by the human immunodeficiency virus (HIV), (UN, 2011).

## Chapter 2: Literature review

### 2.1 Homosexuality

The subject of sexual orientation attracts varied societal attitudes. According to the American Psychiatric Association (2012), the term 'Sexual orientation' is frequently used to describe a person's romantic, emotional or sexual attraction to another person. In this relationship an individual is attracted to men, women, or to both sexes. This attraction gives an individual identity in relation to behaviour and membership in a community of others who share similar attractions. Studies have also demonstrated that sexual orientation ranges along a continuum, from exclusive attraction from the opposite sex to the exclusive attraction to the same sex (American Psychological Association, 2008). Nevertheless, when discussing the subject of sexual orientation, three categories are identified as homosexual, heterosexual and bisexual. Homosexual refers to an individual having emotional, romantic or sexual attraction to members of one's own sex. Heterosexual refers to an individual having emotional, romantic or sexual attraction to members of the opposite sex, and bisexual refers to an individual having emotional, romantic or sexual attraction to members of both sexes (American Psychological Association, 2008). In circular terms, a male homosexual is commonly referred to as a gay while a homosexual woman is referred to as lesbian. However, the term 'gay' is not recognised by all men who have sex with men (MSM) and therefore it is generally used to describe sexual orientation as opposed to 'MSM' which describes behaviour (Boundless, 2012).

Homosexuality is believed to have existed as long as humans have lived, changing names depending on particular periods in time. During the times of King Henry VIII, the King of England, homosexuality was practiced as one of the forms of sodomy (Bray, 1996). According to Houston (2013), sodomy or sodomite were the words used to describe same-sex anal acts or behaviour in and around the fifteenth century. Houston further explains that sodomy was at first generally a specific act, a sexual one, and it became more broadly used as an offence against the 'nature' of the church-state authority. During this period, traditional male sodomy involved the anal penetration of a young boy by an adult man, although sometimes women were also seduced. However, with time, there came about a 'new form of sodomite' that had exclusive interest in their own sex. This is believed to be the time when homosexuality in men was exclusively noted, although it was still called sodomy and was both a religious issue and a criminal problem (Crawford, 2007). Despite the fact that homosexuality can be inferred from sodomy, it is important to understand that sodomy as used in this context was a broader concept. Rather than the attraction between two individuals that came with what is known as homosexuality today, the concept of sodomy had a connotation of 'intentional sexual acts' in it. This means that in sodomy, the act was centred at sexually satisfying the sodomite while the other party was to provide the service.

In and around 1700 in the major cities of Europe, the concept of traditional sodomites was being replaced by the concept of the 'new sodomites', who had an exclusive interest in their own sex. With this change in discourse, the concept of sexual identity (homosexuality) was replacing the concept of lust and unmentionable sin (sodomy). This new concept of sexual identity in same sex relationships brought with it the existence of sub-cultures among people who identified themselves to belong to identical sexual preferences. Members of these sub-groups started to express themselves in 'special' languages and customs, and usually had their own meeting places. This is believed to be the period when homosexuality evolved as it is known today (Hekma G., 1999). In his book 'The History of Sexuality', Foucault M.(1990), states that such terms as 'homosexuality' and 'homosexual' are modern and originated in the nineteenth and twentieth centuries as a recent creation by society of a new class of deviants. He further goes to say that the homosexual was not a sinner as in the old religious sense but someone with an identifiable lifestyle revolving around the choice of sexual partners of the same sex. This 'homosexual' is the one we can identify with in this era and 'homosexuality' in today's times is thought of as a result of sexual orientation of an individual as opposed to behaviour. **Due to the deviant sexual orientation, homosexual persons are often regarded as**

sub-cultures of the social mainstream sexual behaviour, and may face retribution as a result of these social exclusion mechanisms. Social exclusion together with the societal mechanisms that drive it is discussed in the next section.

## 2.2 Social Exclusion

The concept of social exclusion is a complex and multi-dimensional process. Due to its complexity, social exclusion has assumed different definitions in space and time. In his work on understanding social inequality, Murard (2002:41) stated that “‘Exclusion’ is not a concept rooted in social sciences, but an empty box given by the French state to the social sciences in the late 1980s as a subject to study....The empty box has since been filled with a huge number of pages, treatises and pictures, in varying degrees....’. The World Health Organisation (2008) identified five constituents that are necessary to define social exclusion as:

- The group at risk of being excluded,
- What people are excluded from,
- The problem associated with social exclusion,
- The processes driving exclusion and the levels at which they operate, and
- The agents and actors involved.

From this perspective, every general definition for social exclusion should include all the five attributes described above. According to the WHO (2008) therefore, social exclusion can be said to occur when two groups of people and/or individuals exist, with one group/individual preventing the other from accessing certain materials and/or services, and all this must happen as a process. Applying this principle to the case of homosexual persons will fulfil the five necessary constituents as prescribed by the WHO. In this research, the group at risk of being socially excluded are the homosexual persons themselves, and they will be excluded from accessing basic social needs and human rights. The problem associated with social exclusion is the act of homosexuality and how it is perceived by society, and the processes driving exclusion are the laws, norms and beliefs and institutions. The agents and actors involved are members of the ‘mainstream’ society and the law enforcement agencies in particular. From the foregoing, we can see that any anti-social behaviour towards homosexual persons that may lead them to be socially isolated may be a process that makes them to be socially excluding.

As earlier alluded to, the term ‘social exclusion’ has been interpreted in more than one way and it is highly variable in its meaning because it depends on different modes of thinking about society (UN, 2007). Understood as multi-dimensional, the concept has the potential of providing new insights into the nature and causes of deprivation, inequalities and discrimination, and gives new direction to remedial policies. This is the line of thought that Silver (1994) followed in her analysis of social exclusion in which she described three paradigms which represent theories of society as:

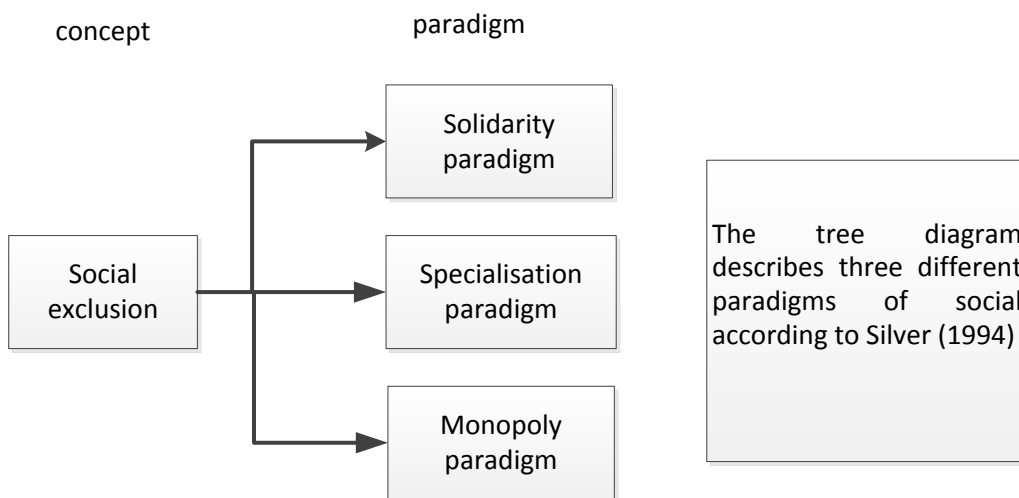
- **The solidarity paradigm**, which sees exclusion as a rupture in social bonds between the individual and society. Integration is based on organic solidarity; social order is constructed around common values and norms that are administered through mediating institutions and policies of integration. As such, exclusion is inherent in the solidarity of nation, race, ethnicity, locality and other cultural or primordial ties that delimit group boundaries;
- **The specialization paradigm**, which ties exclusion to discrimination. Social exclusion results from individual behaviours and exchanges. Social order is formed through networks of voluntary exchanges between autonomous individuals with their own interests and motivations. Exclusion is caused by individual preference or due to the structures created by cooperating and competing individuals, markets and

associations, among others. When group boundaries impede individual freedom to participate in social exchanges, exclusion takes the form of “discrimination”;

- **The monopoly paradigm** reflects societies with hierarchical structures that enforce restriction to access to goods and services for non-members of the dominant groups. Exclusion results from “social closures” when institutions monopolize scarce resources, create boundaries and perpetuate inequality. The “excluded are therefore outsiders and dominated at the same time”.

The three paradigms of social exclusion as argued by Silver can be presented in tree diagram below:

**Figure 1: Paradigms of social exclusion**



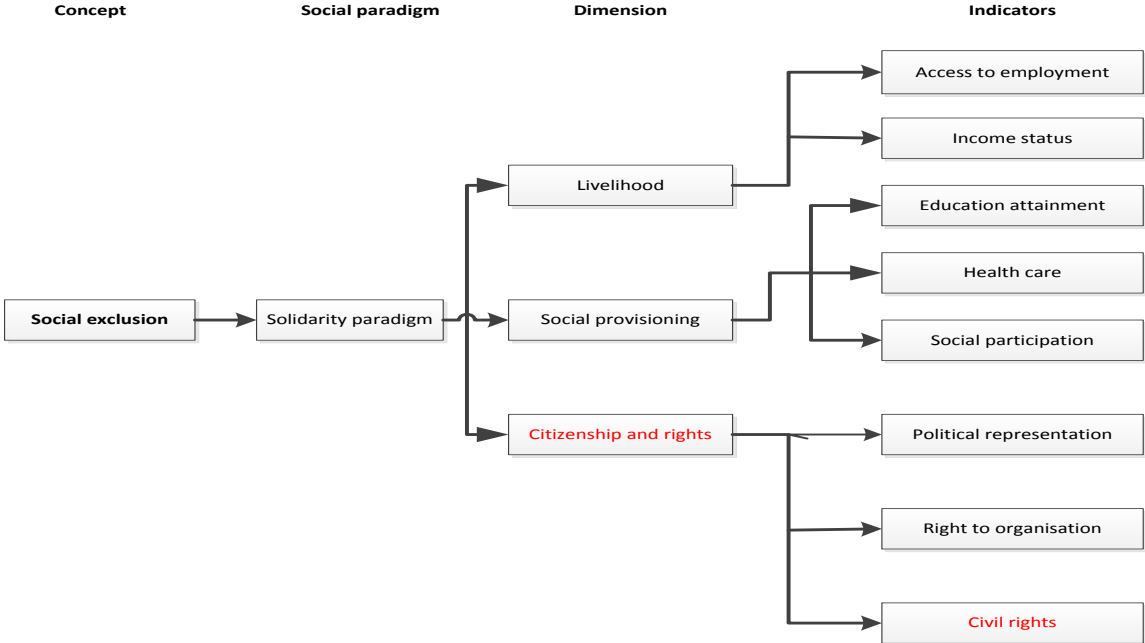
**Source: author**

The three paradigms above describe three models of social exclusion according to Silver. However, for the purpose of this research, the researcher has decided to adopt the solidarity paradigm only because it can best define the situation of homosexual persons in Zambia. According to this paradigm, social exclusion occurs as a result of social order which is constructed around common values and norms due to race, ethnicity, locality and other cultural and primordial ties. Like in this definition, homosexual persons in Zambia today are facing social challenges because the general citizenry believe that culturally, homosexuality is evil and socially unacceptable. These cultural and religious beliefs are the corner stones upon which the processes that force homosexual persons to be socially excluded draw their strength.

To contribute to the understanding of the concept of social exclusion, the United Nations (2007) have further described three dimensions in which social exclusions can exist. In their study, they suggested that an individual or a community can be said to be socially excluded if they are denied access to livelihood options, social provisioning and/or citizenship and rights. This means that each of the three paradigms of social exclusion according to Silver (2004) can be described in the three dimensions of social exclusion as suggested by the UN (2007). However, all these suggestion cannot give us meaningful indication of how socially excluded an individual is at a particular time. In order to measure social exclusion itself, therefore, the UN came up with indicators which are feasible to measure as access to employment, Income status, education attainment, health care, social participation, right to organisation, political representation and civil rights.

These indicators are the ones that should be measured in order to ascertain whether an individual or a group can be said to be socially excluded or not. The extent to which any person or persons lack or access the above social needs therefore determine how much an individual's can be said to be socially included in a community, according to the United Nations. Adding this information to the schematic representation of the three paradigms of social exclusion as shown above will give the figure below:

**Figure 2: Tree diagram for concept of social exclusion**



**Source: author**

From the figure above, we can see that according to the UN (2007), an individual or a group of people can be said to be socially excluded if they are denied access to livelihood options, social provisioning and/or citizenship and rights by another group. These dimensions can then be measured through their respective indicators as shown. For the purpose of this research, the researcher will focus on the dimension of citizenship and rights, and of this civil rights will be studied as indicators of social exclusion of homosexuals. This is so because these aspects are more applicable to the law enforcement activities by the police, the context in which this research is conducted. The basis on which this research was initiated was that the homosexual persons in Zambia today are facing human rights and legal challenges which make them vulnerable and susceptible to mechanisms of social exclusion. If homosexual persons remain socially excluded, they risk to be denied basic rights, including access to medical needs, and this makes them susceptible to diseases including HIV.

To further understand how the process of social exclusion occurs, the theory of 'Othering' will be used and is discussed next.

**2.2.1 'Othering'**

As discussed above, according to the WHO (2008) there are five constituents necessary to define social exclusion. Two of these constituents are that there must be a group that is at risk of being excluded and the other is that there are supposed to be another group that exclude the others. In the relationship of these two groups, whatever the content and criteria of social membership, socially excluded groups and individuals lack the capacity or access to social opportunities and this relationship is perpetuated by institutional processes. This is in line with the argument presented by Ashcroft B., et.al. (1998, pg. 169) in their book 'Key Concepts in

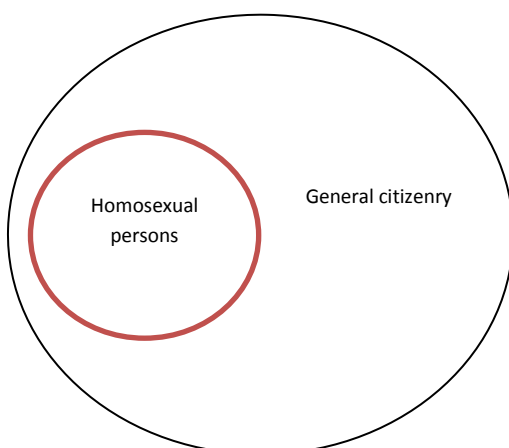
Post-Colonial Studies'. In this book they explain how the concept of colonisation evolves and how in this development the master-servant relationship is established. They argue that for colonisation to occur two groups or individuals they called 'other' and the 'Other' must exist. Through this concept, the colonised subject is characterised as 'other' through discourses such as **primitivism** and **cannibalism**, as a means of establishing a binary separation between the coloniser and the colonised and asserting the naturalness and primacy of the colonising culture and world view. They further called the process by which imperial discourse creates its 'others' as 'othering'. In this relationship, the 'Other' corresponds to the focus or desire of power that produces the subject and the 'other' is the excluded or 'mastered' subject created by the discourse of power.

To further understand the process of 'othering' and therefore social exclusion, a second line of thought by Mackian (2003) in her paper 'A review of health-seeking behaviour: Problems and prospects' has been adopted. In this paper Mackian identified two forms of social capital that are relevant to explain the social exclusion of people in societies. According to her, the first form of capital is the **bonding** social capital, which links members of a particular group together. This form of capital ensures that there is high social cohesion within a group and it acts as a basis upon which members of a group can draw strength. Mackian called the other form of social capital as the **bridging** or **cross-cutting** social capital and according to her, this links people across groups. The cross-cutting ties bring different groups with unequal access to power, resources and influence, together in a way that helps those with less power to benefit from that tie, either directly or indirectly. She further stressed the importance of bridging social capital to minority groups in that bonding social capital sometimes undeniably serves to exclude minority groups from the benefit of internal membership in the wider society. To further advance her point, she gave an example of the criminal gang or the Mafia organisation whose bonding capital has strong support for its members but has negative effects for the outsiders. These dynamics in power relations and their relationship with social exclusion can be elaborated in what the researcher will call the 'ball relationship' and is discussed below:

### 2.2.2 The ball relationship

To further elaborate how the process of social exclusion occurs, the researcher will use a theory he will call the 'ball relationship'. In this theory two balls will be used to represent the two social groups that are necessary for social exclusion to occur, according to the WHO (2008). In this explanation, the researcher will use homosexual persons as one group and the general citizenry, as the other. The general citizenry may compose of people who do not support homosexuality and those who may not want to be seen to support homosexuality. Below are the two balls representing a situation this researcher will call 'normal':

**Figure 3: Schematic representation of normal social of homosexual persons and the general citizenry**

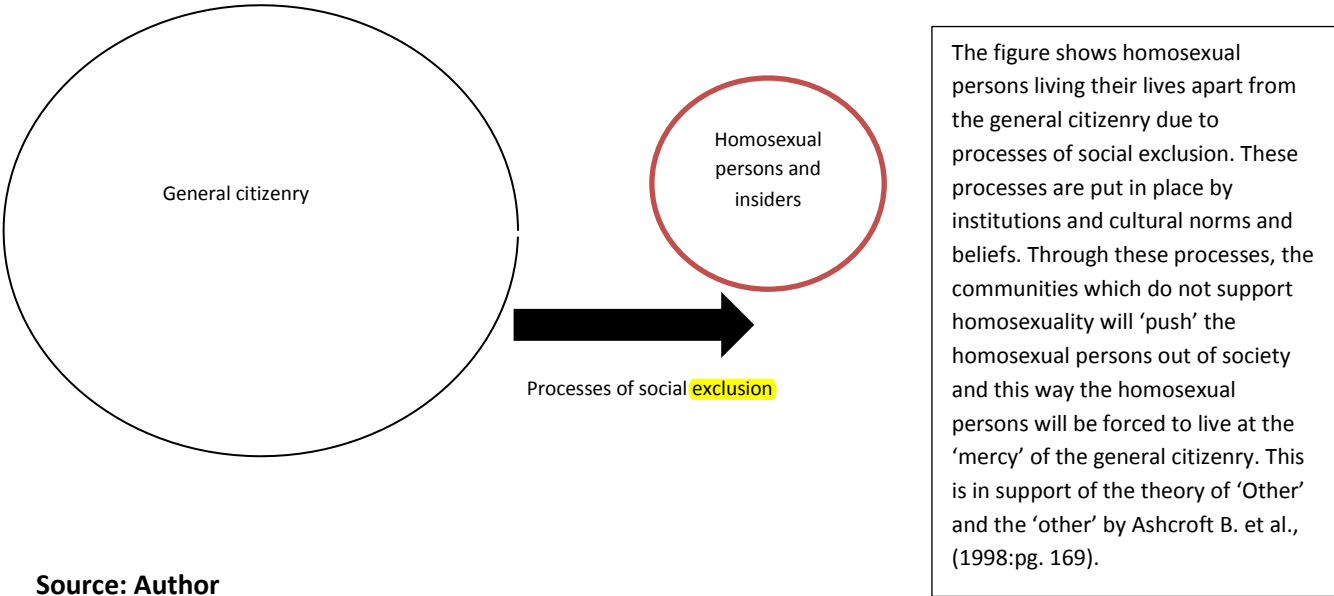


This figure shows what the researcher will call the normal situation. In this representation, homosexual persons exist as a sub-set of the general citizenry, although they may form small groups that will be defined by their preferences. Under this situation, homosexual persons are not discriminated against, although they might be recognised differently as a sub-culture. Both the homosexual persons and the general citizenry are bound by the same bonding social capital, and in this way, therefore no social exclusion occurs.

Source: Author

When homosexual persons are looked upon as 'Others' and are therefore discriminated against by the majority, the bonding social capital between the general citizenry and the homosexual persons becomes weaker and may eventually break down. However, both groups will be strongly held together by their respective bonding social capitals, but homosexual persons will cease to exist as a part of the general citizenry. This way, homosexual persons will be socially excluded from the larger population or the general citizenry. Using the ball relationship, this situation can be represented as shown below:

**Figure 4: Schematic representation of social exclusion of homosexual persons**



Source: Author

In order to ensure that the homosexual persons are not socially excluded as shown in figure 4 above, the bridging social capital between the general citizenry and homosexual persons must be strong. This bridging social capital should be inherent in the law making and enforcement processes and institutions and the social-cultural systems. If the law making and enforcement systems and the social-cultural systems are prejudiced against homosexuality, then the bridging social capital will remain weakened, perpetuating the social exclusion mechanisms that socially isolate the homosexual persons. One of the ways to maintain this status quo is by putting tough laws against homosexuality and enforcing them to the letter. To do this a strong and strict law enforcement agency is required and in most cases it is the police that are employed to undertake the task. In a way therefore, the police can be said to perpetuate the exclusion of minority groups like the homosexual persons through the performance of their duties. Also, since the police are not exempt to political and social-cultural prejudices on homosexuality, their law enforcement activities may be influenced when dealing with homosexual persons. This aspect is further **discussed** in the next section.

**2.2.3 Policing and the human rights**

*'Policing is at the heart of a broad spectrum of human rights discourses. This has been apparent for many of those working on civil and political rights who have generally targeted police as human rights violators. However, policing also has a direct relevance to economic, social and cultural rights. Police can and should play an important role in ensuring a safe environment in which individuals can seek to realise their full range of rights – be they social and economic or civil and political.'* Amnesty International (2010).

Regarding the enforcement of laws against homosexual persons, the police face challenges when it comes to balancing between the international laws on protection of minority groups as recognised by the United Nations Charter on Human and Civil Rights, and the national laws



that prohibit same-sex sexual activities. In June 2011, the United Nations Council on Human Rights adopted resolution 17/19, the first United Nations resolution on human rights, sexual orientation and gender identity (UN, 2012). The resolution 17/19 focuses attention on discriminatory laws and practices at national level and on the obligations of states under international human rights law to address these through legislative and other measures. Its adoption paved the way for the first report on the subject of human rights, sexual orientation and gender identity, prepared by the office of the High Commission for Human Rights. The report presented evidence of systematic violence and discrimination targeted at people in all regions because of their sexual orientation and gender identity, and the law enforcement officers were cited to be one of the perpetrators of this violence (UN, 2012).

All the states that are signatories to the UN Charter on Human Rights are obligated to safeguard the rights of all its citizens as enshrined in the charter. Human rights of homosexual persons in particular are well established in international human rights law on the basis of the Universal Declaration of Human Rights and subsequently agreed human rights treaties. In its report 'Born Free and Equal', the UN states that:

'All people, irrespective of sex, sexual orientation or gender identity, are entitled to enjoy the protection provided for by international human rights law, including respect of rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination, and the right to freedom of expression, association and peaceful assembly.' (UN, 2012:10).

However, the report by the UN (2012), further says that:

'There has been impunity for murder motivated by hatred towards persons identifying as homosexual [.....] lesbian women face an increased risk of becoming victims of violence, especially rape, because of widely held prejudices and myths, including, for instance, that lesbian women would change their sexual orientation if they are raped by a man.'

All these societal prejudices against homosexual persons present professional challenges for the law enforcement officers in their execution of the duties, especially that law enforcement officers themselves are not exempt from these societal perceptions and myths.

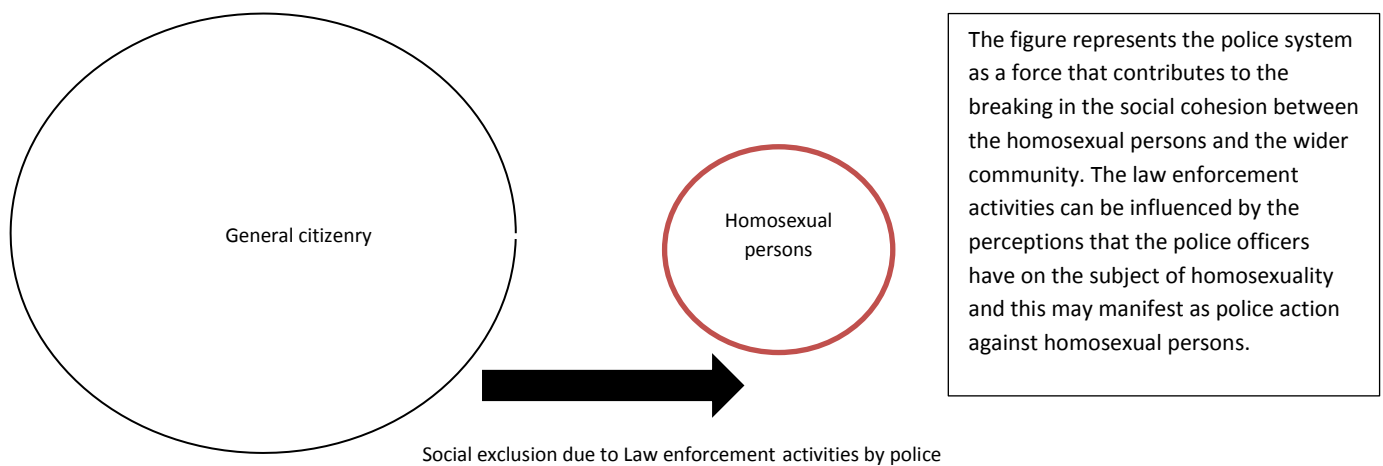
As law enforcement officers, the police are expected to maintain a high standard of professional ethics, in particular human rights norms, in the performance of their duties and in accordance to the international law. However, this is not always easy to achieve due to the fact that the police operate in an institutional environment that presents diverse socio-cultural, political, economic and technological contexts. Law enforcement even becomes more complex when the police have to deal with minority groups who face challenges of social inclusion into the wider societies. In many cases, police have been accused of violating human rights of the citizens, especially those of the minority groups, in their execution of duty due to acts which could be termed prejudicial. Human Rights Watch (2013) reports that in Cameroon, the laws that prohibit homosexuality are subjected to abuse, and can be used by virtually anyone, including the police, as a method of settling scores. The report goes further to say:

'Cameroon prosecutes people for consensual same sex more aggressively. In most cases, the accused are convicted, often on the basis of little or no evidence. Investigators frequently rely on torture or ill-treatment to extract confessions. Although Cameroon's Criminal Procedure Code contains provisions to the effect that confessions must be accompanied by other forms of evidence, these provisions are not respected.'(Human Rights Watch 2013:6).

Scholars have reported friction between homosexual persons and the police in their execution of duties through the 1960s to-date. According to Campbell and Carlos (1995), the police have treated homosexual persons poorly. They attributed this poor treatment to low knowledge among police officers on homosexual-related issues. There are some studies that have shown

that sometimes police hold higher levels of homophobia than other sectors of society. This is the case in the results from the study by Arnott (1994) which found that many police officers have misconceptions about homosexuals; i.e., police feel that homosexuals are mentally abnormal, insignificant in number, are a cultural group, and are identified as an inherently illegal group. He concluded that, in general, police officers are fearful of gays and lesbians, and are homophobic. These societal perceptions by police may influence the way they enforce the laws on homosexuals, affecting the rights of the individual citizens. Looking at this issue from this point of view suggests that, in fact, the police may as much be said to be contributing to the issue of social exclusion of the homosexual persons. Using the ball relationship theory, a schematic representation of this statement can appear as below:

**Figure 5: Schematic representation of social exclusion of homosexual persons due to law enforcement activities**



**Source: Author**

In order to appreciate the experiences of the homosexual persons in Zambia in relation to their human rights, the researcher briefly looks at the system of law enforcement against 'homosexuality' in Zambia, in the next section.

#### **2.2.4 Homosexuality and the law enforcement by the Zambia Police Service**

As mentioned earlier, homosexuality in Zambia is not illegal per se, but sodomy, which can be inferred to homosexuality, is. Sodomy, which is any of various forms of sexual intercourse held to be unnatural or abnormal, especially anal intercourse or bestiality (sex with animals), is a serious offence in Zambia and carries a sentence of up to fifteen years if convicted or life sentence where a child (less than 16 years old) is sodomised or involved. Section 155 of the Penal Code of the laws of Zambia provides that:

Any person who-

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

(b) has carnal knowledge of an animal; or

(c) permits a male person to have carnal knowledge of him or her against the order of nature; commits a felony and liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life:

Provided that where a person-

(i) has carnal knowledge of a child against the order of nature;

(ii) causes a child to have carnal knowledge of an animal; or

*(iii) permits a male person to have carnal knowledge of a male or female child against the order of nature; that person commits an offence and is liable, upon conviction, to imprisonment for not less than twenty-five years and may be liable to imprisonment for life.*

**(As amended by No. 26 of 1933 and repealed and replaced by Act No. 15 of 2005)**

The law cited above talks about carnal knowledge (sodomy), or sexual intercourse, between individuals of the same sex and/or between a person and an animal (bestiality).

The other section which alludes to homosexuality is section 158(i),(ii) and (iii) which provide that:

**158.** *(1) Any male who, whether in public or private, commits any act of gross indecency with a male child or person, or procures a male child or 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 child or person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.*

*(2) Any female who, whether in public or private, commits any act of gross indecency with a female child or person, or procures a female child or person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with himself or with another female child or person, whether in public or private, commits a felony and is liable, upon conviction, to imprisonment for a term of not less than seven years and not exceeding fourteen years.*

*(3) A child who, whether in public or private, commits any act of gross indecency with another child of the same sex or attempts to procure the commission of any such act by any person with the child's self or with another child or person of the same sex, whether in public or private, commits an offence and is liable, to such community service or counselling as the court may determine in the best interests*

*of the child.*

**(As amended by No. 26 of 1933 and repealed and replaced by Act No. 15 of 2005)**

Generally the Zambian culture does not permit the public expression of affection between persons whether homosexual or heterosexual as this is considered a taboo. Therefore it is less likely that persons who are homosexual can commit 'gross indecency' as prescribed by the law. In most cases, persons who have been arrested for homosexual activities have been found or alleged to be found engaging in sodomy. Because of this gist, many people in Zambia have literally taken homosexuality to mean sodomy and vice versa. This implies that, to many Zambians, all homosexuals are sodomites and all sodomites are homosexuals. These perceptions are likely to have an influence on how the Zambian society views and treats homosexual persons. Since officers of the Zambia Police Service are prone to having these same perceptions, their law enforcement activities may be predisposed to violating the rights of the homosexuals. This assertion can be attributed to the unprecedented media coverage on police harassment of homosexual persons in Zambia today.

There has been an outcry in the Zambian media of police officers harassing homosexual persons in the recent past. Complaints such as invasion of privacy of homosexual persons, torture, curtailing of their freedom of expression and forced medical examination are but some of the many issues that have been raised in the media. It is therefore important for the Zambia Police as an organisation to question these allegations in order to get an insight into the law enforcement activities of its officers in relation to homosexual persons in the country.

Based on the research questions and the literature reviewed, a conceptual framework was developed and was used in the data collection and analysis.

### 2.5 The Conceptual Framework

The conceptual framework of this research was developed from the conclusions by Arnott (1994) as quoted by Toth et. al., (2008), who suggested that many police officers have misconceptions about homosexual persons making them vulnerable to social marginalisation. The law enforcement activities of the officers may contribute to the processes of social exclusion mechanism that put the homosexual persons at risk of being permanently socially excluded. According to Carlos et. al., (2012), denying these citizens their rights (social exclusion) heightens their risk of contracting diseases including HIV. The figure below summarizes the factors and aspects that may lead homosexual persons to being socially excluded due to police actions.

Figure 6: Conceptual framework of the research



Source: author

**Chapter 3: Methodology**

**3.1 Study area**

The study took place in Lusaka, the capital city of Zambia. Lusaka is the largest city with a cosmopolitan lifestyle. It is the centre of both commerce and government and connects to the country's four main highways heading north, south, east and west. Lusaka was chosen as the study area because many people who have come out in the open as homosexual have come from this town. Given the number of cases on homosexuality that have been reported in the area, it was assumed that police officers were more conversant with dealing with cases of homosexuality.

Lusaka also harbours offices for government ministries which were important for the running of this research. The researcher needed to be closer to the government ministries in order to address the anticipated challenges that went with doing the research.

**3.2 Research design**

A desk study was carried out prior to data collection to review existing literature on the subject of homosexuality in Zambia and on the law enforcement activities of the officers of the Zambia Police Service, in relation to arresting and prosecution of homosexual persons. Also literature on social exclusion was reviewed in order to relate how the law enforcement activities by police may contribute to the social exclusion mechanisms of homosexual persons from the wider community. The desk study facilitated the designing of the conceptual framework and the methodology for the study.

A qualitative study was conducted using two focus group discussions (FGD) of eight respondents each. The two FGDs were held on junior and senior officers respectively. The FGDs took 3 hours each. The status quo, junior and senior officers, referred to the rank of the officers, with junior officers being of the rank below Assistant Superintendent and senior officers being officers of or above the rank of Assistant Superintendent. The FGDs were used to allow the respondents to fully participate and give out their perceptions on homosexuality. They also provided a good forum from which the researcher could learn the experiences and actions of the officers when dealing with cases involving homosexual persons. Checklists with semi-structured questions were used to gather the information from the respondents. The breakdown of the respondents in each category of the FGD is given in the table below:

**Table 1: Focus group discussion respondents**

Category	Male	Female
	n (respondents)	n (respondents)
Junior officers	4	4
Senior officers	6	2
<b>N</b>	10	6

Further, personal interviews of nine other officers were conducted. The nine officers interviewed included both junior and senior officers. One of these nine officers was the officer-in-charge for the Victim Support Unit (VSU), a section of the Zambia police with special interest in matters of the vulnerable members of society (including homosexual persons). The officer-in-charge VSU was consulted regularly to clarify matters that arose from the FGDs whenever the researcher needed to. The other eight officers were also interviewed for triangulation of data from the FGDs. Interviews was conducted in the officers' offices. The table below shows the breakdown of the nine respondents in the personal interview category.

**Table 2: Personal interviews respondents**

Category	Male	Female
	n (respondents)	n (respondents)
Junior officers	3	1
Senior officers	3	2
<b>N</b>	6	3

Before each interview, the researcher informed the participants about the purpose of the interview, its voluntary nature, and how the information collected would be used, and then obtained informed oral consent. Due to the sensitive nature of the research, the researcher did not identify in the research notes the names of the officers interviewed, or the names of any other interviewees who requested anonymity. These names have been omitted from the report in order to protect the interviewees' identities. At the end of each interview, the researcher provided the officers with information on how to contact him in case they experienced any problems as a result of having participated in the study. No officer has contacted the researcher with any concerns.

In order to get an overview of homosexuality as a social issue in Zambia today, the researcher contacted and interviewed staff from COC-Netherlands, an organisation that advocates for the rights of homosexual persons the world over. COC-Netherlands was selected as a source of information because it is operating in Southern Africa, the region where Zambia is found, and therefore it was assumed to be a good source of information about Zambia. COC-Netherlands connected the researcher to Panos Zambia, a civil organisation specifically working with issues concerning homosexual persons in Zambia. Panos has been actively advocating for the rights of the socially marginalised people (homosexual persons) in Zambia since 1996. With this experience, the researcher considered Panos a reliable source of information on homosexual persons. Both Panos and COC-Netherlands were used to triangulate the information from the FGDs.

### **3.3 Selection of respondents**

Due to the sensitivity of the research topic in Zambia today, the researcher used 'self-willing method' to select the respondents. This means officers who were willing to participate in the study were used. Therefore, the researcher first met with the Officer Commanding for Lusaka district and obtained her permission to conduct interviews. The Officer Commanding referred the researcher to the Officer-In-Charge (police station) who assisted the researcher to find respondents. The researcher asked for volunteers after explaining the academic nature of the research. Those who became convinced and were willing to participate were used as respondents.

### **3.4 Data collection**

Data collection was carried out following a checklist which was developed from the conceptual framework as a guide. The checklist covered factors that may influence the violation of human rights of homosexual persons both at individual and organisational levels as shown below:

#### **Knowledge**

The knowledge of officers was assessed both at organisational and individual levels. At organisational level, the knowledge was assessed through the evaluation of the police training systems while at individual level, the officers were asked on what they knew regarding homosexuality and human rights abuse.

**Perceptions**

The perceptions of officers about homosexuality were studied at individual level only. This allowed the researcher to document perceptions of officers towards homosexuality and/or homosexual persons in relation to human rights abuse.

**Experiences**

Experiences of an individual in handling the cases of homosexuality were also studied. They provided the researcher with an insight into the familiarities that the officers may have in dealing with homosexual persons and how this may affect their law enforcement activities.

**Professional challenges**

These factors were studied both at individual and organisational levels of the police systems. This section provided the researcher with an insight into the encounters that the officers go through when dealing with issues bordering on homosexuality.

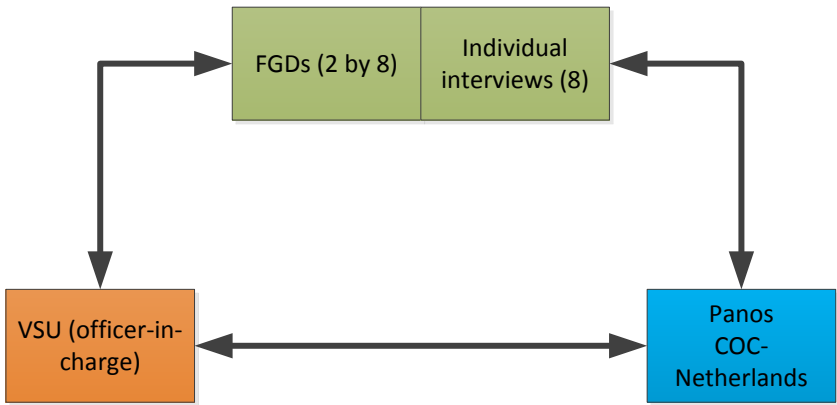
**Decision making**

This aspect was studied to understand how officers make decision when dealing with issues bordering on homosexuality or with homosexual persons.

**3.5 Triangulation of data**

In order to verify the authenticity of the data that was collected from the respondents, the researcher contacted two other sources of information on homosexuality. These included Panos and the Victim Support Unit. Panos is a civil society organisation that advocates for the rights of the socially marginalised groups. The victim support unit is a section within the police that has special interest in issues concerning marginalised groups of society.

**Figure 7: Triangulation of data**



**Source: author**

**3.6 Limitations**

In seeking some degree of self – critical epistemological awareness, the researcher would like to acknowledge his own biases, both obvious and hidden, as one of the major factors that may have influenced the way this research was conducted. This researcher is a police officer, trained to uphold the law and enforce it fairly and firmly to all without prejudice. Same-sex sexual activities are illegal in Zambia and it is the duty of the researcher to arrest and prosecute anyone suspected to be practicing them. Therefore, undertaking this research in itself was a challenge as it was perceived as working against the government to which the researcher owes the allegiance. Due to the political and social attention that the topic of this research is attracting in Zambia today, it was not easy at all for the researcher to conduct this research. The sensitivity of the research topic, made it difficult to find respondents who were willing to voluntarily participate in the research during data collection. The difficulty in finding respondents affected the planning of the field work, and sometimes interviews were

prematurely abandoned if the respondents closed up during the interview. Even after potential respondents were convinced that the research was merely for academic purposes, it was not easy for them to open up and participate freely. This challenge was compounded by the fact that fellow police officers with whom the researcher shares professional predicaments and challenges when it comes to dealing with homosexuality as a social issue in Zambia today were to be interviewed.

Although the research mainly focused on interviews with police officers the researcher interacted with homosexual persons from outside the police and with other civil organisations from time to time, during the field work. Such meetings were almost always ‘suspicious’ because the people outside the police system could not trust the researcher as a student. What was even more challenging was that even some fellow police officers could not trust the ‘genuineness’ of this research and this created scepticism.

The researcher’s cultural background and beliefs regarding sexual orientation may also have influenced the way this research was conducted as the researcher had to first academically reconcile his own cultural and religious perceptions regarding homosexuality before embarking on the study. All these biases and others that the researcher may not be aware of might definitely have influence the way this research was conducted.

**3.7 Data Analysis**

The conceptual framework (figure 6) guided the study during data collection, analysis and reporting. The factors that influenced police officers in the law enforcement activities were divided into two components as organisational level factors and individual level factors. Aspects of these factors were used to analyse the law enforcement activities of the police officers in Lusaka in relation to homosexuality and/or homosexual persons. The table below show the aspects which were used:

**Table 3: Aspects that were considered for data collection and analysis**

Level of study	Aspects considered
Organisational and individual Levels	<ul style="list-style-type: none"> <li>• Decision making</li> <li>• Professional challenges</li> <li>• Knowledge</li> </ul>
Individual Level	<ul style="list-style-type: none"> <li>• Perceptions</li> <li>• Experiences</li> </ul>

**Source: Author**



## Chapter 4: Research Findings

### 4.0 Results

#### 4.1 Conducting the research

The researcher found out that despite the sensitivity of homosexuality as a social issue in Zambia today, conducting research on the subject matter is possible in the Zambia police. However, resistance was experienced from the officers during data collection. This resistance was not experienced at organisational level but at individual officers' level. Some officers delayed administrative processes that were relevant to allow the researcher proceed with this research. Due to this resistance data collection was delayed for three weeks (see annex 2).

#### 4.2 Crime statistics

In order to ascertain the extent to which homosexuality and/or homosexual persons are a problem to the Zambian society in terms of crime, the researcher accessed crime records for the years 2012 and 2011. Below are the tables showing national statistics of some offences for these two years.

**Table 5: Statistics for some offences for the year 2011**

Offence	Defilement of a child	Rape	Assault on a child	Incest	Murder	Unnatural offences	Child stealing
Reports	1339	211	61	28	32	11	11

**Source: Zambia Police Central Statistical Office (2011)**

**Table 4: Statistics of some offences for the year 2012.**

Offence	Defilement of a child	Rape	Assault on a child	Incest	Murder	Unnatural offences	Child stealing
Reports	2369	215	23	25	75	19	23

**Source: Zambia Police Central Statistical Office (2012)**

The two tables above show extracts of offences from the annual crime statistics for the two respective years. These offences have been selected from among the other offences in these two years for the purpose of comparing their gravity and frequency of occurrence. Each of the above offences is defined as below:

- Defilement of a child: Having sexual intercourse with a girl (less than 16 years) with or without her consent.
- Rape: Having sexual intercourse with woman or girl (above 16 years), without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or, in the case of a married woman, by personating her husband.
- Assault on a child: Assault or battery on a child causing actual bodily harm.
- Incest: Having sexual intercourse with a close relative.
- Murder: Wilful causing of death of one person by another.

- Unnatural offences: Having sexual intercourse with any person against the order of nature (against the conventional way of the heterosexual sense), or having sexual intercourse with an animal, permitting a male person to have sexual intercourse with one's self against the order of nature (against the conventional way of the heterosexual sense). Acts of homosexuality are inferred here.
- Child stealing: Forcibly or fraudulently taking or enticing away a child, who is less than 16 years from a parent or guardian, or receiving or harbouring the child, knowing it to have been so taken or enticed away or detained.

No woman was reported to have been arrested for homosexual related offences.

#### **4.3. Factors influencing human rights violation of homosexual persons by police**

Following the conceptual framework, data was collected on the five aspects (knowledge, perceptions, experiences, decision making and challenges). The findings from the three sources of information i.e COC-Netherlands/Pink-In-Blue/Panos, VSU and FGD/Interviews, are presented below:

##### **4.3.1 Knowledge**

###### **Individual level**

The study revealed that generally officers lack sufficient understanding on the subject of homosexuality. From their reporting, the respondents were confusing homosexuality with sodomy (which is a crime under the Zambian laws). When asked to explain what homosexuality is 15 out of 16 respondents from the FGDs described homosexuality as:

*'A male having anal sex with another male.'*

Only 1 of participant described homosexuality as:

*'When two men decide to stay together as boy-friend and girl-friend'*

The FGDs further revealed that the officers considered homosexuality as a 'new offence'. 13 out of the 16 participants from the FGDs at indicated that they knew homosexuality as an offence. One out of the 16 FGDs participants (CID officer) reported to have known that homosexuality was not an offence under the Zambian laws, per se. The remaining two participants were not sure. None of the respondents understood that homosexuality exist in females also. All the respondents understood homosexuality as a relationship (sexual or romantic) between males only and this excluded lesbians (female homosexuals) in their understanding.

All respondents expressed distaste for homosexuality. The following table shows the responses from the officers when they were asked to state what they understood about homosexual persons:

**Table 6: Responses from senior officers**

	<b>Respondent</b>	<b>Response</b>
<ul style="list-style-type: none"> <li><b>Question:</b> What is your understanding about homosexual persons?</li> </ul>	R1	Sinners
	R2	What they practice is Satanism
	R3	Satanists
	R4	Signs of the coming of Christ
	R5	They don't differ from animals
	R6	Not Christian
	R7	I don't know how they think
	R8	They are destroying our culture

**Field data**

COC-Netherlands also reported similar suggestions stating that many people in Zambia, lack sufficient knowledge about homosexuality. They further alluded to the confusion that arises when people including police officers mistakenly refer to acts of sodomy as homosexuality. According to them this has caused society to hate homosexual persons making them vulnerable to social abuse. The source also stated that:

*‘Many people including police officers in Zambia mistakenly think that homosexuality is a crime under the Zambian laws. There is however no law in Zambia suggest that homosexuality as a crime. What is crime is anal sex, which is sodomy and that is what is confused with homosexuality.’ - International programmes officer for COC in Southern Africa.*

**Organisational level**

To further assess the knowledge of the officers, the researcher evaluated how much the officers are being exposed to refresher courses on human rights of the minority groups. Respondents were asked to state the last time they underwent refresher courses and what courses they attended. The participants were asked this question because laws that emphasise the protection of the rights of the minority groups are being accentuated more recently than in the past. Officers may therefore have missed the opportunity to acquire this perspective during their recruit training. The following graph represents parts of the responses to this question:

**Figure 8: Number of officers who have attended refresher courses in the past ten years**



**Field data**

Two out of the 25 participants reported that they had attended refresher courses in the last two years. Five other respondents reported to have undertaken refresher courses in the last five years. Eighteen out of the 25 respondents reported not to have attended any refresher courses in the last 10 years. None of the respondents who were re-trained reported to have undertaken courses in human rights of the minority. One of the respondents had the following to say regarding refresher courses:

*'Even if we have repeatedly told our officers to respect the rights of the suspects, we have been receiving a lot of complaints from members of the public on the treatment of marginalized groups of our society by us police officers. What is sad for me is that even in these times the police can still mistreat women, street kids (orphaned children on the street) and so on. What do you think can happen to people like homosexuals or sex workers? It's not good. Officers need to be retrained now and again to enhance their competence'* – **senior officer VSU.**

Findings from the FGD also revealed that officers are not sent regularly for refresher courses because of shortage of manpower. Mainly senior officers stated that they have fewer officers than their establishment require. Therefore they cannot afford to let officers leave the stations now and again. One officer –in-charge stated that:

*'Look, I have 287 officers against an establishment requirement of 372. Therefore, I always have less officers running the shifts and this is very tiring for them. I do not therefore have the "pleasure" of sending my officers for courses although I know they are important. The station must run.'* – **Senior officer.**

#### **4.3.2 Perceptions**

##### **Individual level (senior officers FGD)**

The respondents in this category perceived homosexuality as a deviant act both socially and religiously. Five out of 8 participants perceived homosexuality as an act against the church order. The remaining 3 participants perceived homosexuality as a sociocultural problem.

In contributing to the FGD, one senior officer explained how he found it difficult to deal with issues concerning homosexual persons given his background:

*'I find it difficult to deal with homosexual offences. Personally I am a born again Christian and the bible tells me that homosexuality is sin. When I am dealing with a homosexual person, therefore, I feel like I am dealing with a person who practices Satanism. For me even if the government introduces Sharia law against homosexuals I can support it. Even hygienically it is not right.'* – **Senior police officer.**

Another respondent blamed homosexual persons for 'making the job of a police officer difficult'. He said:

*'These people are just making our job difficult. When you arrest someone for "homosexuality" all senior people get involved. Sometimes even the DC (District Commissioner – political head of district) sermons you as if you are the criminal'* – **Senior police officer.**

##### **Individual level (junior officers FGD)**

Respondents from this category perceived homosexuality both as a religious and sociocultural problem. Four out of 8 participants perceived homosexuality as a social problem. They attributed the reported incidences involving homosexuality to substance (drug) use. Three of the remaining 4 respondents cited unreligious reasons as the cause for people to involve in homosexuality. According to these respondents, homosexuality represents the end of world in the biblical sense. They described homosexual persons as worst sinners needing spiritual deliverance. Only 1 respondent indicated that it did not matter what homosexuals did.

According to this respondent, people especially adults should be given the right to choose what is right for themselves. This respondent went on to say:

*‘Even if people call the homosexuals immoral, I think us who are heterosexual are more immoral. That is why for me I think if a person chooses to be homosexual or not is not a problem that is their life and I am comfortable with my choice. Besides in the eyes of the law there is no homosexual/or heterosexual when it comes to justice [.....] of course I am a Christian.’ - CID officer.*

To illustrate more of the perceptions of the officers on homosexuality, the table below highlights some responses that were recorded from junior officers when they were asked to describe homosexual persons in one statement:

**Table 7: Responses from junior officers**

Question: What would you say about homosexual persons if you were asked to describe them in one statement?	Respondent	Response
	R1	Mutual attraction induced by substances
	R2	Worst sinners
	R3	They need spiritual deliverance
	R4	It is not normal
	R5	They are pagans
	R6	Homosexuality is wrong
	R7	That is their life
	R8	Not biblical

**Field data**

The researcher explored the social cultural beliefs of the respondents in relation to homosexuality. To achieve this, the researcher wanted to know individual opinions on homosexuality as a social issue. Three out of the 8 respondents attributed the engagement of young Zambian men in homosexual activities to the love for money. They suggested that young men who are being sexually ‘abused’ by men from the western world just do it because they need money to survive. Poverty and high unemployment levels were reported as factors contributing to these young men’s involvement in homosexual activities. Two out of the 8 respondents said homosexuality is a culture of the western world and therefore it just corrupts the African culture. The table below shows the responses that were recorded from the FGD:

**Table 8: Responses of officers on homosexuality as a social issue in Zambia (junior officers FGD)**

	<b>Respondent</b>	<b>Response</b>
<b>Question:</b> what can you say about homosexuality as a social issue in Zambia today?	R1	People just do it for money
	R2	Most of the people who do it are just recruited
	R3	It is a culture of the western world. It just corrupts the morals of the African culture.
	R4	There is no way a man can be attracted to another man.
	R5	Those who are talking about it just want money from Europe. It is not a serious issue
	R6	People just do it for money
	R7	It a culture of the Western world
	R8	People just do it for money

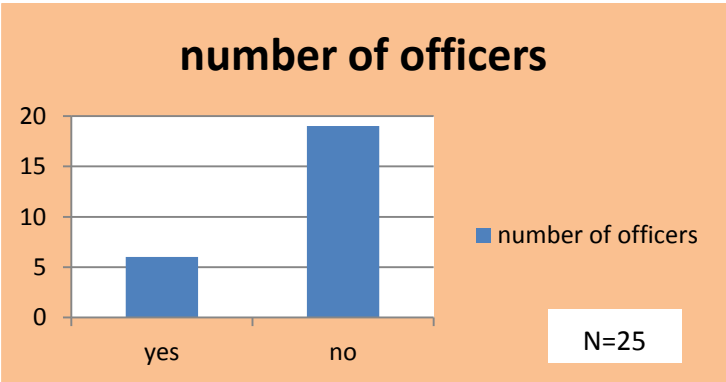
**Field data**

**4.3.3 Experiences**

**Individual level**

To assess experiences of officers on homosexuality, respondents were asked to state whether they had arrested homosexual persons before, and if they did how they carried out the arrest. Junior officers were the only ones who were asked this question because they are the ones who are mostly involved in making arrests, and therefore it was assumed that this will be more applicable to this category. The figure below illustrates the responses that were recorded:

**Figure 9: Number of officers who had ever arrested homosexual persons before**



**Field data**

Six out of the 25 officers who participated in this study reported to have arrested homosexual persons before. Four of the 6 came from the FGD (junior officers) and the remaining 2 came from individual interviews. Nineteen out of the 25 participants reported not to have arrested homosexual persons before. From the 6 officers who reported to have had arrested homosexual persons before, only 3 were willing to share their experience while the other 3 declined. The table below shows the responses from the three officers:

**Table 2: Responses from officers on their experiences in dealing with cases involving homosexual persons**

R1	I am used to dealing in “normal cases”, so dealing with such a case was challenging. I was constantly being monitored by my superiors.
R2	It was a strange experience because I never believed two men can willingly have canal knowledge of each other as partners. I thought these things only exist in the western world. It was uncomfortable for me to deal with “those” people so I had to quickly finish the case and hand it over to prosecution.
R3	I treated them like any other suspects although I had a lot of pressure coming from my supervisors to hasten the case.

**Field data**

As shown 2 out of 3 respondents who reported to have dealt with cases involving homosexual persons indicated that they would treat homosexual persons differently from other suspects. One out of the 3 indicated that he would not treat the homosexual persons differently from other suspects but will follow the Criminal Procedure Code. However, he reported that the influence of his superior officers may affect his actions. This report is similar to the one given by officers from the Victim Support Unit. The officer from the VSU had the following to say:

*‘The other problem we face is that senior officers want to control the way we handle issues concerning the marginalized groups although it is supposed to be us who should be advising them.’ – Senior officer VSU.*

Further discussion of the experiences of officers on the issues of homosexuality revealed that even if some officers had not arrested homosexual persons before, they would treat them differently if they happened to do so. The FGD discussions (junior officers) revealed that 3 out of 8 respondents were sure they would treat the suspects differently. Differently in this sense was meant to imply poor treatment. One respondent said he would treat homosexual suspects according to the Criminal Procedure Code (laid down procedures). Two other respondents declined to comment while 3 said they were not sure. The table below shows the responses that were recorded:

**Table 10: Responses of officers on how they would arrest homosexual persons (junior officers FGD)**

<b>Question:</b> how would you arrest a person if they are suspected of engaging in homosexual activities?	<b>Respondents</b>	<b>Responses</b>
	R1, R2	I will treat them differently from the way I treat other suspects
	R3	I will treat them according to what the criminal procedure code says
	R4	I will not treat them as I treat other suspects because what they do is not biblical. They have degraded themselves anyway.
	R5	I am not sure. It is a sensitive issue
	R6,R7	No response
	R8	If it is following the law, all the suspects must be treated the same way because they are not guilty until proven so by the courts of law. But sometimes it is difficult to treat them the same way.

**Field data**

The findings from Panos also indicate that homosexual persons were poorly treated in police custody. Panos further reported that police officers did not respect the rights to privacy of persons suspected to engage in homosexuality.

*[...] like what happened in Kapiri-Mposhi recently, police officers forcibly entered the house of the two young men who were suspected to be living as a homosexual couple. Entering their house without a warrant! Is this permitted?' - Panos*

#### **4.3.4 Professional challenges**

##### **Organisational level**

Out of 8 senior officers, 6 responded that political interference was the major factor that influenced their law enforcement activities against homosexual persons. The remaining two officers declined to talk. Senior officers reported receiving more pressure from politicians to act on homosexuals than junior officers. They reported that sometimes they receive 'orders' from politicians to act swiftly when cases bordering on homosexuality are reported. One senior officer had this to say:

*'Police can never work independently when it comes to these issues (homosexuality). Politics will always be at play.'* – **Senior officer.**

The junior officers also reported that they experienced work pressure from the senior officers when dealing with homosexual offences. They reported that issues that border on homosexuality are monitored more closely than other offences. One CID officer had the following to say regarding work pressure:

*'When you are given to investigate a case involving homosexuality just know you are going to be "working" with the officer-in-charge. These cases are closely monitored that is why they sometimes end up in court without sufficient evidence.'* - **CID officer.**

In a similar view, findings from COC-Netherlands also reported that politics play a vital role in protection or violation of the rights of the homosexual persons. For instance, in South Africa, despite other challenges, the government started to open up on homosexual issues. This has made it possible for the rights of the homosexuals to be upheld.

##### **Individual level**

Senior officers were reported to face more professional challenges at individual level than the junior officers when it came to dealing with homosexual issues. Six out of 8 respondents cited political pressure that came with such offences as the major contributing factor towards the homosexual rights violations. According to them the political pressure that come with the offence is so much that some senior officers have been re-deployed for 'mishandling' the cases. Junior officers reported internal pressure that came from senior officers as influencing the way they handle cases bordering on homosexuality. Generally, all the respondents from the two FGDs reported societal pressure when dealing with homosexual offences.

The report that was obtained from Panos also suggested political and media pressure as possible influences on police action towards homosexual persons. The source reported that:

*'Lately we have been receiving reports that suggest the systematic abuse of the rights of homosexual persons by the general public and the police in particular. It seems like the church, the media, the police name it, are systematically conniving to abuse the rights of these otherwise innocent people. It is sad that in these times people can be persecuted for their sexual orientation. It is shameful. How can you explain the recent arresting of Engender Zambia activist for merely appearing on television to discuss an issue? I know you are from police but please try to be more professional. Do not always follow instructions from "above"'* – **Regional director, Panos**



**4.2.5 Decision making**

**Individual level**

The study revealed that the decision making by officers when dealing with cases bordering on homosexuality did not depend on rank. The junior officers (FGD) reported that senior officers’ interference influenced the way they handled cases. All the 4 officers from the FGD (junior officers) that reported to have handled cases bordering on homosexuality indicated that they experienced pressure from their superiors. They reported that almost all the decisions were taken by superiors, and they only implemented them.

The FGD (senior officers) revealed that it was difficult for the superior officers to work independently when dealing with cases with homosexuality. The officers also cited societal and political pressure as the factors that influence their decision making processes when dealing with offences bordering on homosexuality.

The personal interviews also reported similar challenges. The 2 officers from the personal interview category also reported the influence of superior officers as the factor that influences their decision making process.

**Organizational level**

The study also assessed the level at which police officers in Lusaka upheld the rights of the homosexuals as stipulated by international human rights which Zambia is a signatory. The assessment of procedures followed when arresting persons who are alleged to be practicing homosexuality was also done. The VSU report on this matter revealed that officers violated human rights of homosexual persons when dealing with homosexual persons. Commenting on the matter VSU officers had the following to say:

*“...there is a lot of excitement from the public when they hear of a case concerning homosexual persons. Unfortunately this is not the same excitement that the public and the media show when in my view more serious offences like defilement of 2 years old girl child occurs. This could be due to the statements that come from politicians and religious leaders....”-senior police officer.*

Also the officer cited the pressure from the church and the general public as having influence on the way police officers work when dealing with cases involving homosexual persons. The media was another external factor that the officer said influenced the way they dealt with cases involving homosexuals.

The above reports can be backed by statics obtained from the VSU office. The crime statics indicated that cases bordering on homosexuality had a higher prosecution turnover than the other offences as shown below:

<b>Offence</b>	Defilement of a child	Rape	Assault on a child	Incest	Murder	Unnatural offences	Child stealing
<b>Reports</b>	1339	211	61	28	32	11	11
<b>Taken to court</b>	817	118	36	11	23	11	7

**Source: Zambia Police Central Statistical Office (2011)**

<b>Offence</b>	Defilement of a child	Rape	Assault on a child	Incest	Murder	Unnatural offences	Child stealing
<b>Reports</b>	2369	215	23	25	75	19	23
<b>Taken to court</b>	1247	93	11	13	47	18	13

**Source: Zambia Police Central Statistical Office (2012)**

The statistics above indicate that unnatural offences, offences under which homosexual acts fall, were prosecuted more than the other offences despite being the lowest in prevalence. The statistics revealed that in 2012, about 95% of offences under which homosexual acts fall were prosecuted as compared to about 53% for child defilement and 43% for rape among others. This is despite the fact that offences like child defilement are equally grave if not more grave since they involve girl children as victims.

The trend for 2011 statistics is similar with unnatural offences prosecuted at 100% while defilement and rape were prosecuted at 61% and 56% respectively. The statistics however also show that more serious offences like murder occur more frequently than offences that border on homosexuality.

The researcher also conducted interviews with the regional director for Panos. Panos reported that the biggest factor that contributed to the marginalisation of homosexual persons in Zambia today was the negative reporting on homosexuality through the mainstream media. According to her, the mainstream media influenced social hatred towards homosexual persons. The source also indicated that they have been receiving complaints of abuse of the rights of the homosexual persons in Zambia by both the general public and the Zambia police in particular

## **Chapter 5: Discussion**

This study explored the factors that may be possible contributors to the social exclusion mechanism against homosexual persons by the Zambia police. Two levels were identified as the possible points at which this can occur. These factors are at individual and organisational levels of the police system. Five aspects were studied as possible contributors to the violation of the rights of the homosexual persons. Knowledge, perceptions and experiences were studied at individual level whilst decision making and operational challenges were studied both at individual and operational levels. The findings of this study are discussed below:

### **5.1 Knowledge**

#### **Individual level**

The global human rights environment is complex and dynamic, and it is constantly changing depending on advancement in time, technology and human species. In order to keep up with this pace, every organisation needs to ensure that its members attain the highest possible amount of knowledge that will keep them applicable to the pertaining institutional environment. The findings of this research showed that generally Zambia police officers lack sufficient knowledge on homosexuality. 94% of the respondents from the two FGDs described homosexuality as anal sex between two men. What the respondents lacked was the understanding that homosexuality exist in both males and females. Rather than the anal sexual acts as described by 94% of the respondents, Homosexuality refers to an individual having emotional, romantic or sexual attraction to members of his or her own sex (American Psychological Association, 2008). According to this definition, both males and females are included. The respondents may not have included women homosexuals in their reporting maybe because of the fact that the Zambia police have not officially received reports of female homosexuals to date. This is not to suggest that female homosexuals (lesbians) do not exist in Zambia. However, it could be due to social cultural and gender aspects that are sterner on women than men. Therefore, women are less likely to express themselves sexually, especially under the context in which homosexual persons in Zambia live today.

The study also revealed that generally police officers consider homosexuality as an act of 'deliberate human behaviour' than of sexual orientation. This can be seen from the responses which were given when participants were asked to state what they thought of homosexuality as a social issue in Zambia. In their responses, participants stated that people who engaged in homosexual activities do so for the love of money and are just recruited by individuals who want to bring the western culture to Zambia.

A lot of studies that seek to clarify the above misconception and therefore explain homosexuality as sexual orientation and not deliberate behaviour have been undertaken. Foucault (1990) describes homosexual persons as individuals with identifiable lifestyles revolving around the choice of sexual partners of the same sex. Houston (2013) also elaborates on the subject by stating that as opposed to sodomites who practised same sex behaviour for self-satisfaction (sodomy) around the fifteenth century, homosexuals had exclusive interest in their own sex. The findings of this study on what participants described as homosexuality therefore do not conform to what homosexuality is according to the literature.

This lack of understanding of homosexuality by the police officers may be the cause for confusing homosexuality with sodomy. Sodomy (anal sexual intercourse) is a serious offence under the laws of Zambia. Therefore, if the understanding of homosexuality by the officers is that homosexuality is tantamount to sodomy, then this discourse criminalises homosexual persons in the eyes of the police systems. This could be one of the reasons that may make police officers prejudicial when dealing with homosexual persons. It is important therefore that officers are provided with the right information that does not frame homosexual persons as 'criminals'. This finding is in line with the results from the study by Campbell and Carlos (1995). In this study, Campbell and Carlos concluded that police have treated homosexual

persons poorly. They attributed this poor treatment to low knowledge among police officers on homosexual-related issues.

### **Organisational level**

The low levels of knowledge among police officers on this otherwise very important social matter may indicate the culture of the police system at organisational level. For the Zambia police as an organisation, the officers must deliberately be exposed to learning systems that will support their professional capacity in carrying out their duties. Failure to do so will imply that the officers will lag in terms of information acquisition and this leaves them at a disadvantage when it comes to performing their law enforcement activities in a global context. The findings of this research show that only 7 out of 25 participants have undergone training in the last 10 years. If this is taken as a reflection of the general picture of the training culture of the organisation, seven officers retrained in the last ten years, out of the 25 participants is little. The respondents further indicted that none of the seven officers retrained took a course in human rights of the minority groups. This can be detrimental to the upholding of human rights of the citizens, especially the socially marginalised. The situation also makes the officers to be prone to believing in myths and misconceptions, which may eventually influence their law enforcement activities. As the UN report on human rights said:

*‘.....there has been impunity for murder motivated by hatred towards persons identifying as homosexuals.....lesbian women face an increased risk of becoming victims of violence, especially rape, because of widely held prejudices and myths, including, for instance, that lesbian women would change their sexual orientation if they are raped by a man...’ (UN, 2012).*

These reports can be supported by the atrocities like the recent killing of the Cameroonian Gay activist in circumstances that suggested murder by homophobic people in that society (Washington Blade, 2013). All these homophobic acts are perpetuated by myths and prejudices, and ignorance is the fountain from which they sprout. It is therefore incumbent upon the Zambia police system to always ensure that its officers are fed with the right information.

### **5.2 Perceptions**

The perceptions that an individual has on a subject matter will influence their actions. Part of this study sought to find out the perceptions that police officers have of homosexual persons. The perceptions were only studied at individual level. The study findings indicated that the perception that many officers have of homosexual person's border on religious and social-cultural beliefs. Mainly the officers perceived homosexual persons as sinners who should not be allowed to exist in the Zambian society as their behaviour is foreign and destroys the morals and culture of the Zambian society.

The above perceptions are similar to those which were reported by ACLU (2013) in their report on the International Covenant on Civil and Political Rights. In this report, ACLU stated that the general social attitude of society towards homosexual persons is mostly negative and covered with perceptions that homosexuality is immoral and a form of insanity. In his study of the perceptions of police officers on homosexual persons, Arnott (1994) also reported that Police have misconceptions about homosexual persons. He stated that police feel that homosexual persons are mentally abnormal, insignificant in number, are a cultural group, and are identified as an inherently illegal group. In his conclusion, Anortt stated that, in general, police officers are fearful of gays and lesbians, and are homophobic. This is in agreement with the findings of this research on the perceptions of the police officers as can be adduced from their description of homosexual persons. In this study, police have described homosexual persons as Satanists who represent the end of time in the Christian context. They have gone on to describe them as immoral sinners who need to be spiritually delivered. If these perceptions are the general perceptions that the police have against homosexual persons, then they are likely to be prejudicial in their law enforcement activities.

### **5.3 Experiences**

The findings of the research showed that 6 out of the 25 respondents had dealt with cases bordering on homosexuality and/or homosexual persons. Of the 6 respondents, only 3 were willing to share their experiences while the other 3 declined. 2 of the 3 who shared their experiences stated that they would treat persons suspected to engage in homosexual activities differently while the other one said he would follow the procedures of the Criminal Procedure Code. The reluctance of the 3 officers to share their experiences could mean a lot of things. The worst of it all could however be that their experiences were so bad that they did not want to share them. How else could otherwise one decide to remain mute if it is not to protect their image as law enforcers? Comstock (1991) observed that police officers themselves may act as perpetrators of homosexual violence in his study of homophobic violence.

The study also revealed that 75 per cent of the participants would treat homosexual persons differently from the way they would treat other suspects. Treating the homosexual persons differently could mean treating them poorly without following the laid down procedure. This is evident from the statements the officers used to describe homosexual persons. In their statements, the officers indicated that they believed homosexuality was a wrong practice both religiously and socially. This assertion is in agreement with both Panos and COC-Netherlands who suggested that police officers violate the rights of homosexual persons through their law enforcement activities.

The study could not establish how police officers in Zambia could treat women homosexuals (lesbians) because none of the officers had arrested a woman homosexual. However, the increasing activities involving male homosexuals are a good indicator that even if they do not come out in the open like men do, female homosexuals exist in numbers too, in Zambia. Although not reliable, websites that advertise dating of Zambian lesbians have become common, an indication that they are operating underground. This is mainly due to the societal expectations that go with being a woman in Zambia and Africa as a whole.

### **5.4 Decision making**

#### **Individual level**

The study showed that the junior officer rarely made decisions when dealing with offences bordering on homosexuality. Senior officers reported that they have made it their responsibility to make all decisions on homosexual matters because, according to them, it is safer for their jobs. They cited the social/political pressures as the factors that mostly determine their decision process.

#### **Organisational level**

Apart from the internal (organisational) and individual factors that may influence officers in the decision making, external factors too have their own influence. These influences are as a result of the political, economic, socio-cultural and technological (PEST) environment that surrounds the organisation. There have been a lot of political and religious statements that have been made in the context of homosexuality in Zambia in the recent past. These pronouncements have emanated from people with political influence and/or religious clout. Such individuals usually influence society's perceptions on certain subject matters because of the respect and authority that they command. The police have the obligation to serve the government of the day and every officer is made to swear to this oath before commencing training. This oath, among other things shapes the professional behaviour of every police officer. It is therefore quite challenging for a police officer to disregard political statements as most of these are viewed as instructions rather than social comments.

From this study, most respondents reported difficulty to deal with situations which attracted social or political attention. This report is similar to the one which was raised from the interview with Panos. Panos reported that the negative and sensational publicity that both the electronic and print media give to the issue of homosexuality in Zambia has influence on the public

opinion over the matter. This enormous publicity may sway the public attention and indeed that of the law enforcement officers from crime issues that are equally important and may actually be of more social concern. The crime statistics obtained from Victim Support Unit of the Zambia Police, for instance, indicate very high prevalence of defilement cases (sexual intercourse with a girl younger than 16 years), that is 2369 offences in 2012 and 1339 offences in 2011, as opposed to unnatural offences (which constitute 'homosexuality') at 23 offences in 2012 and 11 offences in 2011. Defilement cases in particular are very rampant with the New Times of Rwanda (2012) reporting that Lusaka is currently reporting 90 defilements of young girls every month. These girls are sometimes as young as four year olds. Below are some of the excerpts reporting on defilement cases:

Excerpt 10: Extracts of media reports on defilement cases in Zambia

#### **Numbers of defilement cases alarming**

Home Affairs deputy minister Stephen Kampyongo told Parliament that 6,127 defilement cases have been recorded during the last three years....- **Zambia daily mail, 27 July 2013.**

#### **Girl (4) defiled**

A FOUR-YEAR-OLD girl on Monday broke down in the Kitwe Magistrate Court when she narrated how a 31-year-old man of Mukuba-Natwange in Kitwe allegedly defiled her....- **Zambia daily mail, 02 August July 2013.**

#### **82 year old denies defiling 9 year old girl claiming he's been set up**

An 82-YEAR-OLD man of Kitwe's Kawama has been put on his defence after the Kitwe Magistrates Court found him with a case to answer for allegedly defiling a nine-year-old girl....- **The Lusaka Times, 25 July 2012.**

#### **Grandfather 65, nabbed for defiling granddaughter**

Police in Serenje have apprehended a 65 year old man for allegedly defiling his 14 year old granddaughter...- **The Lusaka Times, 6 January 2013.**

#### **Defiled girl (6) stirs emotions in court.**

A SIX-YEAR-OLD defilement victim raised emotions in a Kabwe magistrates' court when she failed to stand the sight of the defiler and held on to her mother in what appeared like looking for safety....- **Times of Zambia, 8 June 2013.**

The above excerpts are examples of offences which are more serious and hence require much more publicity than homosexuality. However, due to external factors mentioned above, the cases involving homosexual persons are given much more publicity and therefore public attention than other equally serious but more frequent offences. This scenario, coupled with the negative reporting as alluded to by Panos, is likely to reinforce the hatred of society towards homosexual persons and homosexuality, while society shifts its attention from more serious social issues. The unprecedented reporting is also likely to put pressure on officers dealing with offences involving homosexual persons and therefore might influence their judgment and actions. Under such circumstances officers may fail to act professionally and hence may violate the rights of the homosexual persons in the process.

The above assertion can be explained by the crime statistics obtained from VSU. Despite the gravity and prevalence of defilement cases, they do not receive the same media attention and therefore the expected police action. The number of cases which were taken to court in the two years cited gives an indication of this. In 2011 homosexual related offences were prosecuted at 100%, with defilement cases at 61%. In 2012, homosexual related offences

were at 95% with defilement at 56%. This is despite the fact that defilement cases were more prevalent in both years. Even more striking is that murder, which is a capital offence, is more prevalent in both years, but receives less media attention.

## **5.5 Professional challenges**

Generally the officers reported political interference as the major factor that influences their law enforcement activities against homosexual persons. Both junior and senior officers reported to experience pressure when dealing with homosexual related offences. Constitutionally, Zambia was declared a Christian nation in 1991. With this pronouncement came the promise that the nation will be governed through biblical principles. Successive governments have tried to live to this declaration to fulfill society's expectations. Therefore, according to the Zambian government anything that is not Christian is not Zambian. This discourse has overtaken the discourse of reason that may accommodate the spirit of give and take. According to the bible teachings homosexuality is sin (Bible, Leviticus 18 verse 22) and therefore it is not Zambian, in the Zambian context. Using this discourse, politicians, the church and the media have mainstreamed leadership processes that have vilified homosexuality. This contributes to the factors that exert pressure on senior police officers to expedite policing of homosexual related offences.

This external pressure has resulted into an internal pressure that may even have become a culture among the officers unknowingly. The internal work pressure is what the junior officers may have alluded to when they reported that they are more closely monitored when they are dealing with homosexual related cases. The resulting situation can create a system that can be abused by officers who may just be homophobic themselves. Arnott (1994) supports this assertion in his study of homophobia in police systems. He concluded that some police officers are homophobic. This can explain why the researcher experienced resistance at individual level and not at organisation level. It is possible that in due course, officers have mainstreamed their own homophobic tendencies within the police working systems. Since they have external factors to justify their actions, they feel comfortable with the status quo. It is important to note, however, that police officers have professional integrity that they should uphold and a job to do, and not an opinion to always follow. This then calls for realisation that the police have an obligation to protect the rights of all citizens, more so in this Christian nation, without prejudice. It is important for organisations such COC-Netherlands and Panos to initiate programmes that can specifically target the police in order to challenge discourses such the one prevailing on homosexuality. This can help the police to serve the communities better and curtail practices that may promote activities that marginalise citizens.

## **Chapter 6: Conclusion and recommendations**

### **6.1 Conclusion**

The findings from this research show that the crime statistics from the Zambia police are not proportionately related to the law enforcement actions by the police system. The study has also shown that the public framing of crime largely influences perceptions of police on the gravity of certain offences and the ensuing responses. Of paramount importance in this assertion is the influence of the media, politicians and the clergy, which forces sway the public opinions on social matters. This research indicates overwhelming media attention, misplaced discourse and articulated mechanisms of social exclusion towards homosexual people whereas their 'crimes' are almost zero in statistical terms. On the contrary crimes involving 'sexual defilement' of children show high scores in the crime statistics whereas they receive less media attention, lack an explicit negative discourse and do not lead to processes of social exclusion.

Due to the external influences described above, police officers do not always follow the laid down procedures when dealing with offences bordering on homosexuality. This situation is compounded by the fact that police officers themselves perceive homosexuality as a sinful act perpetuated by people who try to imitate the western culture. As a result of these societal perceptions, some police officers tend to treat persons suspected to engage in homosexual activities poorly.

The external level factors mentioned above were not part of the framework of this research. They were therefore not explored directly through questioning the relevant subjects cited by the respondents. Exploring these factors can further improve the understanding of police action towards homosexual persons.

However, the findings of this research have also shown that police in Zambia may potentially have mainstreamed homophobic tendencies within the structures as was evidenced by the delay in the start of data collection of this research.

Officers in the Zambia Police Service are generally less exposed to learning systems that are supposed to constantly back their professional capacity in dealing with crime. This is likely to negatively influence their general perceptions on crime matters as their source of knowledge will not be backed by the legal framework, and therefore likely influence their law enforcement activities.

### **6.2 Recommendations**

Based on the above, the following recommendations are formulated:

To the police command

- Explore the homophobic tendencies that are possibly being mainstreamed within the organisational structure. This can be done through analysis of behaviour of officers towards homosexual persons at all levels. The research department of the Zambia police can undertake this task.

To the Director Human Resource Development of the Zambia Police

- Expand training for all police officers on human and civil rights, and the international and national law obligations for police officers. This must be done with the emphasis of the rights of the minority.



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## **Annex 1: Article - Let us debate homosexuality without bigotry and hate-speech**

Dear editor,

The recent publicity surrounding the subject of homosexuality and 'gay rights' is unearthing unprecedented and frightening levels of hatred, intolerance and bigotry in our country. Ordinary citizens, Christian and Islamic religious leaders and at least two senior government officials have appeared in the media publicly and angrily denouncing homosexuality and homosexuals. Some of the expressions have bordered on the unthinkable.

Recently, I heard a caller to a popular radio phone in talk show saying words to the effect that all homosexuals should be 'killed'. A cabinet minister called the same show and said "the government will not tolerate any calls for gay rights". He also announced that "government is working on amending the laws against homosexuality to make them even tougher".

I am still absolutely horrified that a citizen can phone a radio programme and call for the killing of fellow citizens because they are different or behave differently. It is even more horrifying that no one in this 'Christian' and democratic nation' - not the radio station, the law, religion nor government – has made any comment on this call.

We need to be mindful that allowing such hate-speech to go unchecked is dangerous. Where will it stop? If people can freely call for killing of men who have sex with men, what will stop others from calling the killing of people of a certain religion, nationality, tribe, or whatever else? We have seen examples of massive abhorrent tribal genocide elsewhere in Africa – some of it fuelled and driven by bigotry and hate-speech spread on the radio.

No amount of debate, hatred, bigotry, disgust, arrests, or (God-forbid) killing, will make homosexuality disappear from our midst. Like it or not, homosexuals are our sons, brothers, nephews, relatives, workmates and neighbours. We also know that homosexual activity is among the drivers of HIV infections in Zambia. We need to know the extent and how, so that we can halt new infections. If we drive them underground we shall never conquer HIV.

Many say homosexuality is un-Zambian, un-African and un-Christian; surely so is bigotry, hate-speech and calling for the killing of others because they are different.

In Malawi, President Joyce Banda suspended the laws against same-sex relationships last year so that the people and legislators can review and debate them pending a parliamentary decision on whether to repeal the laws or not.

Police were ordered not to arrest anyone involved in homosexual relationships or acts, until the laws have been reviewed. The Malawian laws on this, like Zambia's, were bequeathed them by the British colonialists. Britain reviewed and repealed them for the British; and are now debating same-sex marriage..

Let us review and debate ours rationally and maturely – without hatred or bigotry. We owe it to ourselves, our children and to posterity.

**Dr Mannasseh Phiri (Spokesperson – Medical Doctors Association of Zambia)**

**Shimabala.**

Posted by online editor on May 8th, 2013 // No Comment

## Annex 2: Data collection

Date	activities
Monday 15/07/13	Reported at Police Service H/Q. I submitted my letter of introduction to the Director of Administration who advised me to write to the Inspector General of Police and seek permission to conduct my research in Lusaka. I did as advised and left all my documents for the attention of the I.G. I was asked to get back the following day.
Tuesday 16/07/13	I went back to H/Q to follow up the issue. The director admin. Told me that my documents are still in the office of the I.G. I was asked to phone him the following day.
Wednesday, 17/07/13	-I phoned the director admin. at 1000hrs to follow up the issue but he asked me to call him back at 1400hrs the same day. -I called him back at 1400hrs. He told me he had not gotten the feedback and asked me to see him the following day.
Thursday, 18/07/13	I met with the director admin., he said he had not yet gotten the feedback from the I.G's office. He asked me to wait and that he will communicate to me when he gets the feedback.
Monday, 22/07/13	My request to conduct the research was approved by the I.G., and I was asked to go to the office of the director admin. the following day.
Tuesday, 23/07/13	Met with the director admin. and I was told that my file had been referred to the office of the director training.
Wednesday, 24/07/13	I went to see the director training but I was told she was out of the office.
Thursday, 25/07/13	I met the officer-in-charge of training since the director of training was still out of office. The O/I/C told me that my personal file had gone missing.
Monday 29/07/13	-I was officially informed that police command had approved my request at 1000hrs. -I took the approval letter to the commissioner for Lusaka Province for her action. I was told to get back to her office at 1400hrs the same day. -The commissioner gave me a go-ahead and referred me to the officer commanding Lusaka District. -The OC Lusaka District asked me to get back to her office the following day.
Friday 02/08/13	The OC gave me a go-ahead to conduct my research.
Tuesday, 06/08/13	I had a focus group discussion with junior officers at Chilanga Police station 11 00hrs – 14 00hrs
Wednesday, 07/08/13	A follow up to Chilanga Police on the focus group discussion (personal interviews)
Thursday, 08/08/13	Had focus group discussion with superior officers at Lusaka Central Police. 09 30hrs - 12 35 hrs
Friday, 09/08/13	A follow up to Lusaka Central on the focus group discussion. (Personal interviews)
Monday, 12/08/13	Went to see officer –in-charge VSU for interviews, 09 00hrs. told he was out. Conducted interview with officer-in-charge VSU, 14 00hrs – 15 15hrs

Tuesday, 13/08/13	Made an appointment with Panos, 10 00hrs Met Lilian (Panos boss) 14 00hrs. Told to go back the following day as she was addressing a meeting that afternoon.
Tuesday, 14/08/13	Had an interview with Lilian, 13 00hrs – 15 20hrs
Thursday, 16/08/13	Left Lusaka for home (Copper belt province)

### Annex 3: Check list for interviews

Aspects	Questions
Knowledge	<ul style="list-style-type: none"> <li>• What is your understanding of homosexuality?</li> <li>• When was the last time you underwent refresher courses?</li> <li>• What courses did you take?</li> <li>• Are you aware of anyone you know that identify themselves as homosexual?</li> </ul>
Perceptions	<ul style="list-style-type: none"> <li>• what can you say about homosexuality as a social issue in Zambia today?</li> <li>• What would you say about homosexual persons if you were asked to describe them in one statement?</li> <li>• What is your feeling towards homosexual persons?</li> <li>• How would you arrest a person if they are suspected of engaging in homosexual activities?</li> </ul>
Experience(junior officers only)	<ul style="list-style-type: none"> <li>• Have you ever dealt with any case concerning homosexuals?</li> <li>• If yes, please explain how you dealt with that?</li> <li>• Have you attended courses on human rights of the minority recently?</li> </ul>
Professional challenges	<ul style="list-style-type: none"> <li>• How do you view homosexuality from the point of view of law enforcement?</li> <li>• As a law enforcement officer have you ever witnessed any acts that you would term as discriminatory against homosexuals in your work and/or in the community?</li> <li>• What do you think are the professional challenges encountered by officers when dealing with homosexual related offences?</li> </ul>
Decision making	<ul style="list-style-type: none"> <li>• Have you ever arrested a person suspected to practice homosexuality?</li> <li>• If yes what was your experience?</li> <li>• If you were given a case bordering on homosexuality today, how would you handle it?</li> </ul>