

**Conflicting Normative Systems and Institutional Challenges  
to Human Rights in Africa: A Case Study in Zambia**

**Mwaka Daniel Chikoye**

Submitted to the  
Institute of Graduate Studies and Research  
in partial fulfillment of the requirements for the degree of

Master of Arts  
in  
International Relations

Eastern Mediterranean University  
February 2021  
Gazimağusa, North Cyprus

Approval of the Institute of Graduate Studies and Research

---

Prof. Dr. Ali Hakan Ulusoy  
Director

I certify that this thesis satisfies all the requirements as a thesis for the degree of Master of Arts in International Relations.

---

Prof. Dr. Ahmet Sözen  
Chair, Department of Political Science  
and International Relations

We certify that we have read this thesis and that in our opinion it is fully adequate in scope and quality as a thesis for the degree of Master of Arts in International Relations.

---

Assoc. Prof. Dr. Wojciech Forysinski  
Supervisor

---

Examining Committee

1. Assoc. Prof. Dr. Wojciech Forysinski

---

2. Assoc. Prof. Dr. Moncef Khaddar

---

3. Asst. Prof. Dr. Nuray Ibryamova

---

## **ABSTRACT**

African states are faced with critical human rights challenges which continue to imperil the lives of countless citizens on the continent. Political instability, wars, genocide, and poverty to name a few have all played significant roles in aiding the violation of basic rights which presently affect the liberties of Africans. Zambia specifically, have displayed poor records in various aspects of human rights such as labor rights, women's rights, refugees, and the rights of internally displaced persons (IDPs) consequently gaining attention globally.

To realize the extent of the African human rights conundrum, it is important to point out the most basic underlying causal factors of abuse of human rights. In which two key factors account for the poor human rights record in Zambia; Institutional challenges, and socio-cultural influences on continent-wide value systems which continues to struggle to accommodate the universal human rights model enshrined in the Universal Declaration of Human Rights (UDHR). The African Charter on Human and Peoples' Rights, with its emphasis on group rights and individual duties challenges the Universal account of rights. The cultural differences presented not only the tension between individual and group rights but also the question as to whether the universalism of human rights is possible.

The focus of this thesis are the challenges facing human rights on the African continent today. It provides a short historical backdrop before moving on to an examination of the normative framework that presently prevails at the continental level. Incorporated are issues such as cultural relativism or reductionism, the

structure and content of the African Charter on Human and Peoples' Rights, the human rights of women. Findings present various reasons such as: poverty, spirituality, lack of education and the government of Zambia continue to play a role in hindering the possibility of wide acceptance of universalism of human rights in Zambia.

**Keywords:** human rights, universalism, cultural relativism, UDHR, ACHPR, institutional challenges, social cultural Influences.

## ÖZ

Afrika devletleri, kıtadaki sayısız vatandaşın hayatını tehlikeye atmaya devam eden kritik insan hakları sorunları ile karşı karşıyadır. Siyasi istikrarsızlık, savaşlar, soykırım ve yoksulluğun tümü, şu anda Afrikalıların özgürlüklerini etkileyen temel hakların ihlaline yardım etmede önemli roller oynamıştır. Zambiya, özellikle işçi hakları, kadın hakları, mülteciler ve ülke içinde yerinden edilmiş kişilerin (ÜİYOK'ler) hakları gibi insan haklarının çeşitli yönlerinde zayıf kayıtlar sergilemiş ve sonuç olarak küresel olarak dikkat çekmiştir.

Afrika insan hakları muammasının kapsamını anlamak için, insan haklarının kötüye kullanılmasının altında yatan en temel nedensel faktörlere işaret etmek önemlidir. Zambiya'daki zayıf insan hakları sicilinin iki temel faktörden kaynaklandığı; İnsan Hakları Evrensel Beyannamesi'nde (UDHR) yer alan evrensel insan hakları modeline uyum sağlamak için mücadele etmeye devam eden kıta çapında değer sistemleri üzerindeki kurumsal zorluklar ve sosyo-kültürel etkiler. Grup haklarına ve bireysel görevlere vurgu yapan Afrika İnsan ve Halkların Hakları Şartı, Evrensel haklar hesabına meydan okuyor. Kültürel farklılıklar, sadece bireysel ve grup hakları arasındaki gerilimi değil, aynı zamanda insan haklarının evrenselciliğinin mümkün olup olmadığı sorusunu da ortaya koydu.

Bu tezin odak noktası, bugün Afrika kıtasında insan haklarının karşı karşıya olduğu zorluklardır. Şu anda kıta seviyesinde hüküm süren normatif çerçevenin incelenmesine geçmeden önce kısa bir tarihsel zemin sağlar. Kültürel görecelik veya indirgemecilik, Afrika İnsan ve Halkların Hakları Şartı'nın yapısı ve içeriği,

kadınların insan hakları gibi konular dahil edilmiştir. Bulgular, yoksulluk, maneviyat, eğitim eksikliği ve Zambiya hükümeti gibi çeşitli nedenler ortaya koymaktadır ve Zambiya hükümeti, Zambiya'da insan haklarının evrenselciliğinin geniş çapta kabul edilmesi olasılığını engellemede rol oynamaya devam etmektedir.

**Anahtar Kelimeler:** insan hakları, evrenselcilik, kültürel görecelik, İHEB, ACHPR, kurumsal zorluklar, sosyal kültürel Etkiler.

# **DEDICATION**

To My Family and All the Victims of Human Rights Violation in the Republic of  
Zambia.

## **ACKNOWLEDGEMENT**

First and foremost, I would like to give all praise to God Almighty, for without him none of this would be possible. Secondly, I would like to express my sincere gratitude to Assoc. Prof. Dr. Wojciech Forysinski for his supervision, constructive criticism and guidance throughout the process of researching and writing this thesis. Above all, I am truly grateful for his tutoring about the importance of International Human Rights as it has aided in expanding my knowledge and understanding of the discourse. I will always remember one story he told to myself as well as my class classmates about a promise made among him and his fellow university classmates to continue the promotion of human rights, and many years later he continues to do so which is a clear example of his fervent commitment to ensuring human rights are upheld in all part of the world. This was undoubtedly, a motivating factor for me when writing this thesis.

Lastly, I would like to acknowledge my friends and family, especially my parents and siblings for their prayers, unconditional support, and constant motivation. In their absence this academic journey would not have been possible. I will forever be indebted to you all.



# TABLE OF CONTENTS

ABSTRACT .....	iii
ÖZ .....	v
DEDICATION .....	vii
ACKNOWLEDGEMENT .....	viii
1 INTRODUCTION .....	1
1.1 Statement of Problem .....	2
1.2 Aims and Objectives .....	3
1.3 Research Questions .....	3
1.4 Methodology .....	3
1.5 Conceptual Framework .....	4
1.6 Research Hypothesis .....	4
1.7 Background of the Study .....	5
1.8 Limitations of Research .....	6
2 LITERATURE REVIEW .....	7
2.1 Introduction .....	7
2.2 Background of Study: Universalism vs Relativism .....	9
2.3 Human Rights in Zambia: Institutional and Socio-cultural Challenges.....	10
2.4 The Universal Declaration of Human Rights (UDHR).....	12
2.4.1 Understanding the Concept of Diversity in Culture and International Law: UDHR in View .....	15
2.5 The African Charter on Human and People`s Rights.....	16
2.5.1 Significance of the African Charter on Local Human Rights in Africa ...	18
2.6 The Clash of Systems .....	19

2.6.1 The Characteristics of a Constitution .....	20
2.6.2 The constitution of Zambia: Bill of Rights.....	21
2.6.3 The Clash between Culture and Human Rights; A Perspective on Gender- Related Cultural Practices and Traditions .....	22
2.7 Cultural Practices and Traditions that Violates Human Rights.....	24
2.8 Conclusion.....	31
3 METHODOLOGY .....	34
3.1 Introduction .....	34
3.2 Key Research Issues.....	34
3.3 Research Design.....	36
3.4 Systematic Literature Review .....	38
3.5 Application of a Case Study Methodology .....	39
4 FINDINGS ON THE POSSIBLE CONCILIATION BETWEEN THE WESTERN AND AFRICAN HUMAN RIGHTS MODELS .....	40
4.1 Results .....	40
4.2 Introduction .....	40
4.3 Universalism in Zambia Today .....	41
4.4 Key Questions .....	42
4.5 Reconciling Culture and Universality: Constitutional Perspective.....	43
4.6 Discussion of Findings .....	45
4.6.1 The Government of Zambia .....	45
4.6.2 Lack of Willingness by The People.....	46
4.6.3 Spiritualism.....	46
4.6.4 Discrimination .....	46
4.6.5 Societal Belief.....	47

4.6.6 Lack of Awareness and Education .....	47
4.6.7 Poverty.....	48
4.6.8 Challenges of Incorporating International Human Rights into the Cultural Life of Zambia .....	48
5 CONCLUSION .....	49
REFERENCES.....	52

# Chapter 1

## INTRODUCTION

The efforts to tackle human rights challenges are a global phenomenon. At the international, regional and national levels, concrete legal and legislative steps have been taken to combat human rights challenges (Oyowe, 2014). The UDHR represents the most comprehensive global effort taken to address human rights concerns around the world, meanwhile, the African Charter on Human and People's Rights (ACHPR) represents a comprehensive African effort to address human rights issues on the African continent. While both the UDHR and ACHPR employ similar languages and complement each other in most cases, legal scholars as well as IR researchers have pointed out certain areas of conflict between both charters.

African states are currently faced with critical human rights challenges which continue to endanger the lives of countless citizens on the continent. Political instability, wars, genocide, and poverty have all played significant roles in the erosion of basic rights which presently affect the liberties of Africans (Deng, 2006). In Zambia specifically, poor records in various aspects of human rights such as labor rights, women's rights, refugees, and the rights of internally displaced persons (IDPs) have received considerable attention globally. These have led to consistently poor performances for the state in international human rights rankings, while foreign aid has often been tied to governmental willingness to assuage these concerns. In order to understand the African human rights conundrum, it is important to reduce the

issue to its most basic underlying causal factors which give rise to state abuse of human rights.

Two key factors account for the poor human rights record in Zambia; institutional challenges, and socio-cultural influences on continent-wide value systems which continues to struggle to accommodate the western human rights model enshrined in the UDHR (Elechi, 2004). The ACHPR, which lays more emphasis on “group rights” and the “duties of individuals” essentially conflicts with the Western liberal perspective on human rights as expressed in the UDHR. The inherent cultural distinctions brought to the fore not only the tension between individual and group rights but also the question as to whether the universalism of human rights is possible (Donnelly, 2007).

The main focus of this study is the challenges facing human rights on the African continent today. It aims to provide a brief historical overview before examining the normative framework that presently prevails at the continental level. Engaged in this section are issues such as cultural relativism or reductionism, the structure and content of the African Charter on Human and Peoples' Rights, the human rights of women, and the phenomenon of forced displacement- represented most graphically by the predicament of refugees and internally displaced persons (IDPs).

### **1.1 Statement of Problem**

The incompatibility of Western and African value systems has long been cited by rights relativists as the key reason why African states continually underperform in human rights indexes that reflect a Western outlook on rights (Elechi, 2004). However, little has been done in way of research to evaluate this claim by examining

the wording of both the UDHR and its African counterpart (the ACHPR). While the foundations of this problem ostensibly lie in the conflicting normative systems, the legal, institutional and political validity of the problem itself remains to be exhaustively proven. This research attempts to clarify this fundamental problem in the literature.

## **1.2 Aims and Objectives**

This research has two broad objectives: firstly, it aims to highlight fundamental challenges hindering the achievement of human rights in Africa today. This aim is approached by analyzing problems caused by institutional frameworks which underly and reinforce cultural norms which in turn legitimize legal stipulations with respect to human rights. Secondly, the research aims to explore the glaring incompatibilities which exist between the UDHR and the ACHPR.

## **1.3 Research Questions**

What are the key challenges hampering the struggle to achieve human rights in Africa today? What are the key challenges to the accommodation of the Western human rights model enshrined in the Universal Declaration of Human Rights in Zambia?

## **1.4 Methodology**

This research employs a qualitative systematic literature review method as well as descriptive statistics. According to Jahan et al. (2016), a systematic literature review involves “the review of a well-formulated research question which employs systematic and explicit methods in order to identify, select, and critically appraise relevant research, and also to collect and analyze data from the studies that are included in the review” (Jahan et al., 2016). In addition, this particular method is uniquely important for this research because from a theoretical point of view, it

creates inroads towards solving problems in areas where there may be either a lack of sufficient research or the research that has been done in the area have been contradictory or inconclusive (Siddaway et al., 2019).

Moreover, a systematic review can be done in order to synthesize disparate streams of research where they may appear different and irreconcilable (Sánchez-Fernández, and Iniesta-Bonillo,2007) In terms of approach, systematic reviews often incorporate both/either qualitative or quantitative research methods. In this particular study, this is done by systematically selecting 40 journal articles published in recognized academic journals within the 8-year period from 2012-2020. These articles must strictly address the human rights issue in Africa with emphasis on Zambia and express some view about the current challenges of human rights in the country. Google Scholar and Microsoft Academic will be used in identifying the articles and those with the highest citation indices will be granted preference. This will be done by collecting secondary data from international organizations such as Transparency International and Amnesty International. Secondary data will also be derived from academic journal articles.

## **1.5 Conceptual Framework**

This research draws on Cultural relativism and universalism in human rights discourse. The Universalism versus Relativism debate is one of the most important within the human rights literature as it ponders the very applicability of human rights as captured in the UDHR universally.

## **1.6 Research Hypothesis**

Socio-cultural influences contribute to the incompatibility between Western and African human rights models.

## **1.7 Background of the Study**

The African human rights structure is unified within the African Union (AU). First, the conference was anchored by the African Union. As the Charter of the OAU made a few allusions to the UN Charter and the Universal Declaration, it may be said that the Charter of the OAU is inspired by the Universal Declaration. However, Basic law did not include the guarantee of freedom. Any of these problems occurred at the period that OAU was creating its charter of 1975. This may clarify the lack of discussion of Human Rights values in the Charter of the African Union. Later changes, especially the erosion of colonialism and the realization of apartheid looming closer, provided the impetus to seriously consider creating a true human framework for Africa. The outcomes are the application of the Africa Charter and Peoples Freedom.

The African Charter takes a distinct strategy in that it brings both legal, political, fiscal, cultural and social protections together in the same tool. The African Charter is very groundbreaking in establishing community and party privileges. Person freedom and obligations is another distinction between African Charter and the International Declaration of Human Rights. But the African Charter adds claw-back rights on some of the provisions. Being willing to draw inspiration from foreign instruments helps to interpret the provisions of the Universal Declaration. The African human rights framework also upholds human rights and customs.

The area of human rights provides both functional benefits and normative ones. Human rights law is the most successful means to safeguard human rights and ensure the promotion of human rights on a state basis. Countries' regulations on civil rights



take into consideration local traditions and other considerations. States would possibly believe like they have better degree of ownership and thus are more likely to obey decisions, etc.

This would be nice from a domestic legal standpoint since these laws would be near to home. Regional authority structures are likely to more effectively handle grievances. These ethnic minorities are more sensitive in their communities and religions when there are good explanations for them.

### **1.8 Limitations of Research**

This research was primarily limited by time and the ongoing effects of the Covid-19 pandemic which hindered the ability to travel as well as acquire primary data relevant to the research. At the secondary level, the research is limited by its sample size (number of case studies). By analyzing the case of Zambia, it potentially misses out on the possibility of capturing a plurality of approaches to human rights within the African continent which may further shed light on indigenous African human rights systems and perspectives. This represents an important research objective for the future.

## **Chapter 2**

### **LITERATURE REVIEW**

#### **2.1 Introduction**

This research touches on several important areas in the literature which are relevant to this dissertation. In order to thoroughly explicate the cultural origins of the conflicting normative systems, a brief historical context is necessary. This context is provided by tracing the origins of both the UDHR and the ACHPR, as well as the cultural debates which preceded both charters at an academic and political level. It is widely agreed that human rights issues are not limited to a single society, continent or community (Dahre, 2017. P.611). In addition to the struggle over the years to recognize human rights there have been also attempts to build mechanisms for the protection and preservation of those rights at the state, global and regional levels.

Post-world war, nations across the globe sued for directional leadership geared towards resolving conflicts that brought about the war. These nations put together came up to with a draft called the UN Charter with the intention to reassert belief, in the dignity and value of human individual, in view of the rights of both men and women of nations whether big or small. Consequently, the General Assembly of the United Nations made a proclamation stating the Universal Declaration of Human Rights in December 1948.

The International Bill of Human Rights is the title given to the General Assembly of the United Nations Resolution 217(III) as well as two other international treaties promulgated by the United Nations. The International Bill of Rights is made up of the UDHR which was adopted globally in 1948, the International Covenant on Civil and Political Rights (ICCPR) adopted in the year 1966. It is also supported by two Protocols that seem optional including the International Covenant on Economic, Social and Cultural Rights (ICESCR,1966). In 1976 most nations globally had successfully ratified the two covenants thereby giving room for enactment.

For instance, there is the Universal Declaration of Human Rights and the UN treaties and agreements as well as other international human rights instruments. Mechanisms have also been established at regional level to protect human rights. An African Charter on Human and Peoples' Rights is one such framework for the promotion and protection of human rights in Africa (ACHPR, 1981). Other examples of international human rights structures include European and American conferences on human rights serving similar roles in Europe and the United States. At national level, each State makes provisions on the protection of human rights on its territory in its constitutions and common laws.

From a regional perspective, human rights systems emerged out of the increased concerns surrounding rights issues in the aftermath of WWII (Desire, 2010. P.1). African human rights system evolved out of the self-determination movements which multiplied on the continent in the post-war era (Nguema, 1991. P.16). Nguema notes that taught within the African value system, has always existed the notion of human dignity. He further stresses that this recognition within the value system was in no way inferior to the recognition of human dignity in the Western rights system.

## **2.2 Background of Study: Universalism vs Relativism**

The term Cultural Relativism speaks about having regard for cultural diversification which also enhances respect for other cultures other than one's belief as well as supporting various forms of traditions which come with such belief (Asomah, 2015). In looking at the human rights framework globally, advocates of cultural relativism are of the opinion that local cultural beliefs have significant influence on man's conception of the self, while in contrast, the supporters of human rights universalism are of varying thoughts though united in their opposition to claims which imply that the western ideology of humanism is contrary to African traditional beliefs and view the Universal Human Right Convention as an interruption to the way things are done with respect to African way of life. In addition, this concept of Universal Human Rights is perceived to have some form of disruptiveness on the highly valued traditional institutions and practices in Africa and specifically in Zambia and affects issues such as the security of lives, general freedoms amongst many other rights and liberties enjoyed by Africans (Ibhawoh, 2001). As a consequence, the human rights system is widely regarded as precise and accurate in terms of its relationship with culture yet when viewed thoroughly one would be forced to think otherwise. For instance, the practice of Sexual Cleansing or Female Genital Mutilation cannot be said to be in agreement with international human rights practice.

Also, some relativists assert that adopting a universal human rights project is an infringement on the multiplicity of the human nature which has direct impact on the moral standing and legality of the traditional freedom enjoyed by those who practice these beliefs, and it is perceived as another form of western colonization or imperialism. People who subscribe to Cultural relativism argue that it is traditionally

incorrect which comes with some ethical unfairness to package different cultural values into one without considering cultural diversity. As such the supporters of cultural relativism are basically insinuating that no cultural value that has been codified into any form is higher in rank or quality to the other. However, the request for Africans to keep their cultural practices stands against the fight for the freedom of most African women in their bid to also be a participant of the global human rights. Hence this argument has now been caught up in the web of culture against human rights thus stretching the understandable nature of the research further even beyond what various scholars could handle. Although there is another line of thought that which scrutinizes cultural relativism in the bid to underestimate the dynamic nature of the African culture as practiced in Zambia.

### **2.3 Human Rights in Zambia: Institutional and Socio-cultural Challenges**

There appears to be a battle between the inherited cultural belief that generally affects the African society in terms of attitudes, perceptions and public acceptance of the concept of human right in Africa with particular emphasis on Zambia. The Western human rights idea is alien to the African society that has so much belief in its ethno-cultural ways of getting things done. Across the continent there are several socio-cultural beliefs and practices that disproves the concepts and precepts of the universal human rights convention (Asomah, 2015).

A formal declaration of agreement to the Universal Declaration of Human Rights came into existence in the year 1948. The global community largely welcomed this initiative. Human rights basic conceptual structure was based on reflecting a wide scale agreement on the part of the international community in ensuring that the basic

rights is made necessary for every human to enjoy and become a beneficiary regardless of gender, ethnicity, religion or cultural belief. The major concertation of the treaty is to enhance and secure the integrity and dignity of humanity from every form of oppressive instrument – which includes forms of torture, slavery, sexual molestation and harassment, domestic violence, political oppression and suppression, genocide- which has the tendency to portend human existence, survival and peaceful coexistence together within a sound state of mind (African Charter, 1981). After the ratification in 1948 the Universal Declaration has afforded the globe the privilege to have a safe discussion on issues regarding capacity to legally back up the voice against inhumane treatment of humans under any appearance. Regrettably, the declaration and enactment of such a power law on the international scene has not deterred some individuals from carrying out their evil acts by violating flagrantly this Universal Agreement with impunity (Asomah 2015).

It has been observed that various cultural beliefs/practices appease the significance of the Universal Human Rights Declaration while it also influences against the implementation of the various international human rights treaty to which Zambia had signed. Furthermore, these cultural practices are generally held in high esteem hence relinquishing it at any point in time by any individual or group would in most case be a taboo that results in social stigmatization.

The rule of law is fundamentally enshrined in the Zambian constitution, it is ruled by a president who is democratically elected. The nation runs a unicameral legislative system. The constitution of the nation was readjusted under the incumbent President Edgar Chagwa Lungu who ran for a reelection in the year 2016 for a third term in office. He was said to have won the elections with a narrow margin. Reports has it

that the elections were marred with various degree of irregularities, violence and media intimidation (Amnesty International, 2016).

Human rights matters rose up in view of the above which includes extra judicial killings and torture, state police using its powers excessively, random arrest, heavy-handedness, graft and corruption amongst the political class. Human rights abuses in Zambia can be highlighted thus where it can be categorically stated that the government of Zambia is particularly selective in prosecuting perpetrators especially if the group or individual are of the opposition party also the rate of exemption of punishment on the part of the supporters of the ruling party is evident. Human rights issues in Zambia include the following:

- a) Random Deprivation of Life and Other Unlawful or Killings politically triggered.
- b) Inhuman treatment and torture
- c) Disappearance which are in most cases politically motivated
- d) Violence and harassment
- e) Laws against slander and libel
- f) Freedom of association and use of internet, freedom of peaceful assembly.
- g) Lack of openness in government and corruption
- h) Societal abuses, trafficking in persons, discrimination of women (www.State.gov/humanrightsandlabour 2018).

## **2.4 The Universal Declaration of Human Rights (UDHR)**

Zambia signed to the Universal Declaration of Human Rights. The country formally consented to the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1984 and is legitimately tied to the implementation of the treaty via its

domesticated laws and internal policies. In its provision, the global agreement requires the government of the land to enforce and utilize measures in ensuring that there is maximum compliance with the treaty as much as making sure that rights of the citizens are identified in the ICESCR is followed up. It is worth noting that Economic, Social and Cultural Rights in Zambia are treated as second class rights where this includes the rights to good health care system, educational system, food, proper shelter, sanitation and potable water (Mwansa, 2008). Globally the Economic Social and Cultural Rights and the Civil and Political Rights are given same credence according to the UDHR and the Declaration of Vienna, while it is observed that these rights to which the government is a signatory has not been made to work on the home soil, at the moment this international treaty is not captured as part of the new constitution called the Bill of Rights. This is politically motivated so as to silence any form of uproar against the government of the day where the victims of human rights abuse seek compensation at the court of law or other means legally available. Hence since the ICESCR treaty is not captured in the constitution matters relating to such cannot be resolved using viable legal instruments. As such no legal action can be raised in the case of probable violation of the ESCR. (Sam Mwapela 2015) Therefore the human rights provision stipulated in the ICESCR cannot be exercised by Zambians. The Zambian nation is a contributor to a couple of human rights tool which clearly count as the function of the ESCR`s. The following are international convention or covenants under the UDHR project with the aim of enhancing global human rights beliefs to which Zambia is a signatory. They include the following:

- a) Convention on the Elimination of all Forms of Discrimination Against Women which was consented to in 1985 (CEDAW)



- b) The United Nations Convention on the Rights of the Child (CRC) which was made officially valid in 1990
- c) Education for All Declaration (World Education Forum Dakar 2000).
- d) The ten commitments of the World Summit on Social Development Copenhagen 1995.

Although Zambia is a contributor to the implementation of these treaties, the local population has rarely benefited from this contribution due to the fact that the government has decided to make it so (Mwapela, 2015). For these instruments to have a positive outcome, then there is need to ensure its adaptability towards the people that seem to need it most i.e., the locals. Hence it is argued that these treaties are not legally binding on the signatories which has given room for gross arbitrariness in the polity.

The fundamental conceptual structure of the Universal Human Rights has the standpoint that says, relativism of culture is not expected to be a needed support for the current state of human rights violations of individuals in Zambia. It is presumed that the UDHR is an umbrella that shelters, identifies and sustains African diversification in the rich global cultural heritage as inherited with cultural beliefs and practices that allows the liberty of thoughts, cultural activities, consciousness and religion (Banjul Charter, [www. Achpr.org/legalinstruments](http://www.achpr.org/legalinstruments)). In addition, there comes a point in time where cultural practices would be or lead to some infringement on the rights of others ultimately the universal human rights project has the intent of unifying individuals regardless of their ethno-religious stance. The international law frowns at cultural activities that tend to undermine the cultural practice of other

persons. Symbolically, the Universal Human Rights is generally committed to protecting and giving respect to the human life through exercises that dignifies, this viewpoint is superior to any cultural ideology with the fact that it carries higher legal backing and framework. Consequently, it is advised that human rights should not be turned down on the terms of ethno-cultural values, beliefs and practices. (Sam Mwapela 2015).

#### **2.4.1 Understanding the Concept of Diversity in Culture and International Law: UDHR in View**

The idea of human rights is an international concept which is founded and established in the international law with the United Nations Organization essentially representing an unbiased decider. Amongst the primary objective of the United Nations Organization is the emphasizes on human rights of persons which was pronounced in its Charter. It summarizes the Charter as saying human rights is for all without any form of separation where it is agreed that human rights are a birth right for everyone on the surface of the earth and should not be mistaken for privileges or opportunity. The Universal Human Rights Declaration agrees with the fact that the universality of human rights is valid for all (Nabudere, 2005).

The Universal Human Rights are created by a dual international convention that dwells on the rights of humans, they include the ICESCR which is the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights. They seem to address issues with slavery, torture, genocide, racial discrimination, discrimination against women, religious tolerance and child`s right. All of the above have been achieved through decades of work by the United Nations General Assembly as well as other arms of the United Nations

Organization. The preliminary statement of the universal declaration seeks to mention that non-discrimination is a basic rule of international law. Now globally the world is faced with one unique question; how can human rights privileges be coherent with the issues of cultural conflict? In most African states and Zambia in particular, one's natural source of identity is believed to come from his ability to relate deeply with his cultural roots which comes with a great sense of self-realization, expression, self-worth, and a sense of being a part of a collective gathering (Mwapela, 2015). Due to the dynamic nature of man there seem to be some form of cultural rebirth as civilization creeps into the various local communities which is a function of cultural inter relativity, interaction and interchange hence it leads to tension and conflicts particularly with those who believe that their cultural heritage, practice and values should not be wind-swept on the basis of modernization. Sadly, (Nabudere, 2005) argues that this could be an intimidating task in trying to merge cultural values and universal human rights discourse which might eventually arouse emotions from those who hold this belief in high esteem where they argue that the human rights project is perceived as another method of colonial imperialism from the West on the African state.

## **2.5 The African Charter on Human and People`s Rights**

The African Commission on Human and People`s Rights (ACHPR) is a body that has the resemblance to a judicial system or process with the obligation of encouraging and protecting the associative human rights across the continent of Africa while it also translates the African Charter on Human and Peoples` Rights and examines grievances relating to the Charter's violation. The body has the responsibility of inquiring into allegations of breach of human rights thereby establishing actions that gives credibility to application of human right agreements

with the function of creating a platform for dialogue between the states and persons involved. The ACHPR is based on the Banjul Charter that serves as the protector for Africans with respect to human rights issues. The commission was established and force into existence on 21 October 1986 although it was adopted by the Organisation of African Unity on 27 June 1981, where its effectiveness relies on its own treaty. The Assembly of Heads of Governments of the African Union receives the report of the commission. The commission has some core responsibility which is streamlined into three broad sections:

- Promoting human and peoples` rights
- Human and peoples` right protection
- Creating a comprehensible and understandable view of the African Charter on Human and Peoples` Rights (African Charter, 1981).

Most African countries have again shown their identification of, as well as their allegiance to, popularization and defending of the human rights in Africa through the African Charter. The African Charter on the Rights and Welfare of the Child (African Children`s Charter) and the African Women`s Protocol, all identify the existence of territorial and global human rights instruments combined with local traditional practices that has the tendency of getting along with international values with respect to human rights and people.

The article 5 of the women`s protocol mentions that ‘the nation would not allow and condemn all forms of insulting practices with effect on the human rights of women which contradicts identified global standards. It further recognizes the said attitudes as harmful activities that has negative grip on the right of girls and women which

includes the right to living, proper health care, education amongst many others. According to the African Union website and a press release it states that the African Charter has assisted in guiding Africa from the days of doing things wrongly into the new era of human rights where it has allowed the African continent to be exposed to national accountability. The African Charter fundamentally represents a standard that carries out this function effectively by preparing the foundation for the actual enhancement and fostering of human rights on the continent of Africa. Over the past 30 years, the Charter has been successful in assisting persons across the continent lay claims on the international space (achpr.org). It is also worth noting that the Charter has been able to suppress State Supreme Authority through the creation of the knowledge across the continent that human right abuses and violations can no longer go without due punishment or consequences (www.achpr.org/iotacodhria).

### **2.5.1 Significance of the African Charter on Local Human Rights in Africa**

Having its establishment exceed a few decades, the African Commission has been able to reinforce itself as the fundamental rights custodian on the African continent. This feat has been achieved via the use of its capacity to basically interpret and give meaning to the African Charter where it has provided explanation and information to the nations on about how they can appropriately deliver on the dictates of the Charter to the local population. It is expected to be a part of local legislative instrument, in certain countries the Charter has been allowed to influence their national laws by domesticating it (Mwapela,2015). It has also been observed that there has been a significant impact on the support of the Charter, where it provides guidelines for rule of law with respect to human right matters such as abolition of death penalties, gender-based violence, with the support for fair hearing and trial, freedom of expression.

The Charter passionately support the principle that makes indigenous people right-holders. Also due to its advisory position on the United Nations Declaration on the Rights of Indigenous People, the commission has been able to conquer the fears of States with that regard. Also, it helps clarify issues surrounding rights of the women considering the uniqueness of the African Woman where it makes available direction for implementation for African States. The commission takes note of various parts of the Charter that has been abandoned or systemically silenced on the domestic scene as such the Commission has been engaging NGO`s and NHRIs with interactions to help drive home some of the significance of the discourse to the local population. ([www.achpr.org/iotacodhria](http://www.achpr.org/iotacodhria)).

At the moment most national courts across the country has been influenced by the utilization of the Charter instrument and the Commission`s revelation that has been immense benefit to them in giving resolve to matters at the national level. In a number of cases the findings of the commission have been implemented yet most states are still struggling with the devotion to the commands of the Charter due to the corrupt nature of the political class clouded with obvious impunity and reckless violation of human rights laws (Amnesty International, 2006).

## **2.6 The Clash of Systems**

Both ideas of Universalism and the traditional African belief (relativism) are viewed to be policy structures that support the fundamentals of human existence if deeply examined which includes: the right to life, freedom to associate, right to fair hearing and prosecution amongst many others. Although Universalism comes with the trend of modern civilization that ensues and enshrines the Western culture of freedom and liberalism while the latter Cultural Relativism works on the principle of collective or

group interferences where the society is responsible for impacting, in other cases handing out necessary judgement regardless of the age or status of the individual involved in the violation in defense of the rights of the collective rather than the individual.

### **2.6.1 The Characteristics of a Constitution**

The fundamental structure of any civil and organized society is its ability to have a working constitution, it may be documented in terms of writing or not, it could be formal or not but essentially its importance is something every society cannot do without. An individual might not be able to see it or feel its presence in terms of touch, yet every functional society adopts it as a guide for their existence. In post-colonial Africa, nations have come to adopt the use of this document for effective running while some individuals question its adaptability for the African zone arguing that the constitution is an example copied from the West.

In Sub-Saharan Africa, there has been a history of how they govern one another, with history teaching us thus on events that took place in the past, history cannot be invalidated. The basic objective behind constitutional arrangement or creation is to establish the rule of law binding on all with a view of its legitimacy, that will stand the test of time while ensuring that the rights to a dignified life are achieved combined with a proper framework for national economic welfare and development. Conclusively the constitution should provide the support required for the democratization of the society where it enables or drives the systematic transposition of political power. (Ndulo & Kent, 1996) the relevant aspects of the constitution of any nation include the ability to provide protection of fundamental human rights, a judicial system void of political interference and political accountability on the part

of the political elites which rest on the ideas of righteousness, sincerity and integrity. It then follows the fact that the process of making an all-encompassing document such as the Constitution requires a huge level of diligence, consultations with various stakeholders because the Constitution is not a mere law which can be changed at any point. Hence it must be viewed in terms of perception as a higher law that comes with great authority.

Several legislations could easily alter and retract ordinary laws while this is not the case for the constitution, reformation and acceptance of the constitution requires a wide range of participation from citizens with agreements from them as well. It is believed that there is a wide gap between enactment and actual goals of the constitution, that is why it is necessary to have the process carried in the full glare of the nation and also the global community of which the nation is a member.

### **2.6.2 The constitution of Zambia: Bill of Rights**

The Bill of Rights was to a great extent contained in the 1964 constitution of the nation of Zambia. (Ndulo & Kent, 1996) It covers every person without consideration of their religious affiliation, political inclination, race, color, or even gender where everyone is qualified to have basic rights and individual freedom. As enlisted in the constitution the rights of persons provide for the protection of life, freedom, security, freedom to associate and gather, freedom of conscience amongst many others. It is observed that these rights are not unconditional perhaps they are presumed not to be unmitigated, meanwhile, these loops have been an instrument in the hands of the regime to manipulate human right issues especially in cases that involve the state. For instance, the constitution exempts itself from discriminations that have anything to do with the customary law of Zambia where it is understood



that violations against women are carried out. With regards to these shortcomings, the judiciary can impose fundamental human rights such that individuals that have experienced one form of human rights violations could approach the courts for an alter to take place. The courts have been seen to be answering with the right judgements where they also need to tread carefully in matters associated with the political class, where it is obvious that litigations such as this are most likely to be swept under the carpet. This shortcomings in the constitution had negative effects on the system where there were cases of detention without a subsequent fair hearing, detentions based on political differences which led to an era that yearns for greater adequate protection of basic human rights.

### **2.6.3 The Clash between Culture and Human Rights; A Perspective on Gender-Related Cultural Practices and Traditions**

Owing to the troublesome nature of the Zambian political clime where it has had to revoke its constitution several times especially over inclusivity of the citizens concerning issues of absolute powers and lack of proper means of adjudicating matters leaning on human rights infringements. Zambia is one of the few countries in the world if not the only one that has had to make new constitutions four times in a space of thirty years. “Culture” has been defined in a variety of ways over time. The Merriam-Webster online dictionary gives a modern definition of culture as 'the integrated pattern of human knowledge, behaviour and human beliefs that depends upon man`s capacity for acquisition and transfer of same from generations to generations'. In agreement with the definition aforementioned one would realize that culture is seen as a set of conventional belief, social norm, identical characteristic of a particular people, group or community. Ordinarily as believed by the Zambian

people, culture could be the way of doing things, that is unparalleled when compared to other places or people (Mubangizi,2012).

Consequently, this paper has the objective of summarizing an assessment of previous works of literature on this subject matter with specific emphasis on numerous traditional beliefs and practices – circumcision and Female Genital Mutilation and Cutting (FGM/C), marriage by abduction, polygamy, primogeniture, bride price, virginity testing and children marriage/betrothal. It is obvious that these practices and cultural trends are grossly founded in dehumanizing the dignity of womanhood and this is where there is a clash between culture and Universal human rights particularly in sub-Saharan African, but also including other parts of the world. Many writers of African origin in have said a lot about these cultural practices in recent times but it is worth noting that the constitution of Zambia in its entirety has failed to recognize these acts, though it is assumed that the customary laws of Zambia take care of issues that surround cultural heritage where it seems to deny or neglect human rights which are noticeable in its omission in the document. Though the Bill of Rights seek to carefully have a touch on human rights agreement because Zambia is a signatory to most Human Rights Charter globally and regionally but in terms of local enforcement, there has been little or no form of compliance due to the lack of political will on the part of the political leadership. In the African cultural system, it is largely believed that women are lesser humans compared to the masculinity associated with their male counterparts which in turn increases the rate of human rights violation perpetrated against women hence it has led to actions that seem to make men more superior of a being resulting into the relegation of the female folks into mere objects. Practices of this nature are also attributed to the imbalance in

societal position as women are grossly underrepresented in politics as well as in socio-economic roles within communities where such customs are practiced (WHO, 2008).

Ultimately, this research proffers solutions as to how the clash between African culture and human rights structures can be mitigated, hence reviewing with specific reference to FGM, the comprehensible and achievable framework that could be derived with ideas from other African states that had succeeded in this area especially in West Africa. More so, it is one thing to make recommendations while it takes another to accept and see reasons for local widespread implementation (Mubangizi, 2012).

Implementation would be birthed, if the right legislation is in place seeing it as a part of the whole answer to the questions being asked by human rights and culture is dependent on proper local consultation, sound education, granting socio-economic power to citizens while giving support to deviation or turnaround from specific traditional beliefs and its practice by every party involved.

## **2.7 Cultural Practices and Traditions that Violates Human Rights**

### **Female circumcision**

It is popularly known as the Female Genital Mutilation (FGM): In this practice, there is an incision and part removal of the genitalia precisely the external part of the female genital. There are three main types of Female Genital Mutilation.

The first is the removal of taking off the clitoral prepuce (Shelley,1993:1994,1996). Although this form of FGM is said to be placid which is an act carried out amongst most Muslim communities where it is also called the Sunna.

The next type of FGM is one that requires the removal of the clitoris entirely with the labia minora scientifically called the clitoridectomy, in some cases it is called excision.

The last form of FGM is the infibulations popularly called the pharaonic circumcision, this form is done by taking off the whole clitoris, labia minora, and a majority of the labia majora where a small portion of the area is left for urination and menstrual flow.

The practice of FGM is done in the crudest and uncivilized environments with the use of instruments like razor blades, knives, broken glass or mirror which in most cases are unsterilized (Grant, 2006; Shelley, 1993; Lewis, 2009; Mswela, 2009; Sipsma et al., 2012). In most cases these procedures are carried out without the use of antiseptic and anesthetics which has an untold painful effect on the individual also various infections of the genitalia might spring up due to the absence of the right sterilized instruments leading to a more serious and deadly disease such as HIV. However, this practice could be attributed to a whole lot of reasons and factors: some believe that it helps to wade off evil spirits from the girl child, religious beliefs, while others suggest that it help improve and increase female fertility, certain peer-group initiation or welcoming someone into a particular society or group, keeping fidelity and lastly encouraging socio-political bonding in the various communities of practice. (Shelley, 1993; Lewis, 2009).

Though in the light of the turn of events surrounding this practice certain persons willingly give consent to the practice, yet others are too young to give their opinion on the matter, while it has been reported that some participate willingly in this

cultural practice for a couple of reasons which include social acceptance that is accompanied with known economic benefits in a complicated traditional environment. (Mubangizi, 2012).

The Female Genital Mutilation and cutting is a practice that contravenes the views of many international human rights stipulations as well as the domestic Constitution of Zambia where the Universal Human Rights Charter fundamentally stipulates the right not to be subjected to torture, a punishment that is inhuman or degrading treatment which has been appropriately mentioned in various international human rights laws. The laws of Zambia in the Bill of Rights make provision for appropriate punishment against anyone who violates the human right of another especially if proven guilty by a competent court of law.

The constitution according to the status of the Bill of Rights in section 24(1) states that “The Bill of Rights, as provided for in part, is fundamental to democracy and constitutionalism and shall be the basis of Zambia’s social, political, legal, economic and cultural policies and State action”.

Section 24(2) states that the rights and freedom set out in the Bill of Rights are inborn in each person; make provision for the protection of personal dignity; entails rights and liberty that are compatible with this Constitution but not explicitly arranged for, with exception to those that seem repulsive to the ethical judgement and the beliefs of the people of Zambia; and are liable to some limiting factors, criticism and restricts provided for in Articles 66, 67 and 68.

The above sections of the Bill of Rights spell out the rights of the individual under the covering of the constitution of Zambia although it mentions that ethical behaviors that seem unacceptable to the cultural beliefs of the land shall not be tolerated, looking thoroughly into this matter one will discover that though the constitution has the Bill of Rights, yet it gives a systematic backing to the traditional values of the land. Furthermore, there has been a consensus that the constitution is outrightly supports the right to a dignified human life and control over an individual's body, contrarily, the FGM practice falls short of this. We would recall that section 24(1) states that the dignity of life is inherent in the right of the individual due to a silent conspiracy on deaths relating to female circumcision it is therefore difficult to have an appropriate account of the number of fatalities associated with female circumcision, destruction of this normative system of value is the pivotal support for every form of potential rights violation. Practicing female circumcision is a true description of the violation of the dignity of the women upon which the acts are carried out (Mubangizi, 2012).

This practice above is carried out usually on girls under the age of 18 as such the rights of children has been trampled upon, this is in conjunction with the fact that the right of the child's privacy has also been eroded which leads us to another form of cultural practice –virginity testing.

Virginity testing- is another form of female rights violation that involves carrying out a physical assessment of the reproductive parts to ascertain whether the child's virginity has not been tampered with. Failing the test will mean the individual has been deflowered while the one whose hymen is discovered to be broken is said to have lost her virginity. The methodology involved in the process varies from

community to community, in times past the testing is carried out by the mother, aunt or female guardian in a secret place but today the same practice is more of a ceremonial gathering which takes place in the full glare of everyone and it is carried out by an elderly woman accredited by the community for the same purpose (Mubangizi, 2012).

This traditional practice violates the conventions and agreements of human rights universally to which Zambia signed. This virginity testing is against the right to privacy as mentioned in the Bill of Rights, yet it is part of a cultural value in extremely controversial environments. There are believes that subscribes to it as a way of sex education which ensures abstinence before marriage. The girl child is educated on reasons why they should not allow the opposite sex to have their way with them since it will lead to sexual intercourse before its time for marriage with this at the back of the mind of the girl child, she will learn to abstain to avoid any form of disgrace if she's discovered to have lost her virginity. Then another school of thought has it that the practice is one-sided because there is no such test for the male child hence its flip side is the gender bias that is associated with it. Consequently, the female child is seen as an object being prepared solely for marriage, where the practice puts a load on the girl child as regards the responsibility of abstinence and the fight against diseases transmitted by sex. Finally, the aim of a virginity test is solely to reduce the human dignity of the individual which does not pay attention to protecting the individual (Maluleke, 2011).

### **“Ukuthwala”**

Ukuthwala is a word in Xhosa that implies "to carry" (koyana, 198:1). This is the kind of marriage that takes place as a result of abduction, where the victim is to say

abducted to a man's house for marriage. This act is carried out by the friends of the individual who is interested in getting married without the knowledge of the girl. Afterwards, the conjugal ceremony is made to happen. The sad part of this arrangement is that most of the girls involved are between the ages of 12-15 and are forced to marry older men who sometimes are as old or even older than their parents. Regardless of the lack of significant plans to stop the cultural practice and its support from some quarters, there is an apparent clash between human rights and culture.

**“Lobola”** (bride price)

Is also known as bride price or bridewealth or dowry. This is the exchange of property from the family of the groom to that of the bride. This property in most cases may be cattle which in recent times have been converted to money. Lobola is seen as a means of legalizing the union between two persons as such the practice is being subjected to some form of scrutiny by human rights campaigners where they ask the question concerning why the man should be paying a bride price in light of the Universal view that there is global gender equality. This cultural practice is not only peculiar with the Zambian society rather other parts of the world indulge in this practice. It would be a enormous task to subject this human right violation to any nature of reform where it is expected to experience resistance in its strongest.

Amongst other human rights issues that clashes with African traditional beliefs are polygamy, primogeniture, witch-hunting, male circumcision or practices that affect women, widow's rituals, Ukungena. Critically examining every one of the various cultural values, beliefs that most African hold in high esteem, one will discover that they all have one means by which they tend to contradict human right values.



Polygamy: This is described by many scholars and literature as being a practice that has been with man since its existence; it spans through the social, religious and legal spheres of life. In most cases whenever issues relating to polygamy is raised on the international stage it steers a huge cloud of emotion and resentment where the advocates seem not to see anything wrong with it, but human rights advocates say it limits once again the value of the female life by placing a higher value on that of the male. Consequently, it has its bad side which in most cases include, infidelity, the transmission of sexually transmitted diseases just to mention a few.

### **Primogeniture rule**

The primogeniture is the rule that allows the first African male to inherit whatever is left behind by his father regardless of what happens to the rest of his siblings. Though history has it that the culture of the African man has an unending strength trying to reach an agreement and reestablishment of concepts and values contrary to the wide notion of competition and individualism (Maluleke, 2012).

Finally, it will be agreed that though the cultural practices as valued on the continent of Africa has several shortcomings that are subject to ratification if the proper channels are utilized in achieving this, yet some are inevitable without parts that uphold the values of universalism regarding the fact that every human is born with dignity, self-worth, and the realization that they are as important as the community in which they have found themselves globally. Anything short of this is contravening the beliefs of the intellectuals whose brainchild is the concept of Universalism.

## **2.8 Conclusion**

### **The way forward in Zambia**

Following the discourse that has been held on this topic, hence taking an insight into the cause of the clash between various cultural beliefs and values in conjunction with the Universal human rights campaign the writer would like to conclude by mentioning that there is need for a practical method and a persuadable approach which is also involves resolving issues of this nature where sustainable success is assured. Further, society cannot rely on the constitution or its review, legislative suggestions for any meaningful change to take place. For instance, in Ghana, there has been some form of incapacitation of the legislative arm against FGM (Ako and Akweongo, 2009). It will therefore be an ill-advised act to condemn those who practice this culture values doing so will practically drive the persons involved to continue in secrecy, or even give them open support in trying to perpetuate the practice. In trying to overthrow an age-old practice such as the ones aforementioned that has become a part of the people, then there is need for a piece of better information that gives reasons why the old practice should be forsaken (Mackie and Lejeune, 2009). Moving in this direction would be called positive deviance as it generally encourages the abolishment of destructive cultural practices which gives room for better Universally acceptable laws. (Mubangizi,2012). When you seek a change in cultural values, it is like wanting to change the social order of the society this needs to be done with plenty of caution so as not to create a chaotic situation because the supporters of such values would rather hold an argument against why the said changes should not take place. Also, non-state actors are usually influential in the process that could bring about the need to change in the state.

Finally, human rights are the right of everyone regardless of their position, location, social status, sex, age, political inclination, race and religious affiliation the writer has been able to explain these facts using various scholarly conclusions drawn from the literature as well as with illustrations. Human rights are a primary guiding principle for all and ought to be passed from one generation to another.

Following the arguments being put up by various scholars the writer would suggest the following:

- 1) The state should take conscious actions to ensure through legal means as well as administrative structures using the judiciary as its pillar to guarantee equity of economic, social and cultural rights due to its registered commitment to International Covenant on Economic, Social and Cultural Rights.
- 2) Implement necessary actions to remove the limitation to facts and legal supports in considering the trade union system.
- 3) Adopt an all-encompassing methodology or mechanism in the fight against violence against children on the streets with the possible strategy to better their socio-economic welfare.
- 4) Take urgent steps to increase the social and economic lives of the people like this in turn has a domino effect on the social being of the people.

In summary, reviving traditional, customary and cultural practice is a part of the new era of State and Universal identity where this awakening is expected to be deeply founded in living standards enshrined explicitly in the views of equity, democratization, and above all human rights belief. Hence the context of integrating

traditional values with International human rights best practices should reach a specific level of equilibrium.

## **Chapter 3**

### **METHODOLOGY**

#### **3.1 Introduction**

Research is a process of scientific inquiry that is aimed at getting to know things that are new in terms of facts, evaluating ideologies, amongst many others. In addition, it is the classification, analysis and procedural interpretation of data to create and establish new concept to answer complex questions (Yigzaw, 2006).

There is no question that cultural relativism advocates for a respect towards the cultures of all communities regardless of their location. Advocation for fundamental respect of communal beliefs have a certain richness that can be appreciated through diversity and these beliefs are reinforced by the long-term experiences of the communities. This respect for cultural uniqueness is seen as a doctrine that has become institutionalized within human rights scholarship and now contends that the plurality of social values ought to be regarded as a legal necessity and ought not to be disregarded by individuals external to the community. This conceptual framework could practically lead towards a society that is keenly shifting toward self-realization i.e., accepting its own values in the light of current global paradigm that hinges on dignity of an individual and individual liberty (Donnelly, 1984).

#### **3.2 Key Research Issues**

1) Are there reconcilable points between the claims of Universalism and Cultural relativism?

- 2) What are the measures that can be put in place to mitigate the effects of the clash between culture and human rights?
- 3) In practice, how can cultural relativism be reconciled with universalism?
- 4) Lastly, should “human rights” prioritize the rights of an individual or communal right?

Essentially, this work is inclined towards highlighting and emphasizing how universalism and cultural diversity can be merged without conflicting with each other in line with a contemporary understanding of human rights.

Following modern standings and trends one would come to the conclusion that many cultural values that the people in communities previously held so dearly are basically inconsistent with contemporary human rights practice, however, because these traditions were passed from ancestral origins, it made these often-offensive practices a norm that over time became acceptable for members of particular communities.

Furthermore, now in the new era where globalization has brought many things into the African society such as same-sex marriage, issues surrounding the rights of transgender, white weddings, and dress codes just to mention a few, it has been observed that some of the cultural adaptations that have occurred in Africa have been practiced in ways that differ considerably from how they are practiced in the West. For instance, the copulation of bride price and white weddings represents a unique blend which raises serious human rights questions and is certainly not practiced in the West. Hence this research aims at answering the questions bothering on how Universalism can be further strengthened in the African context without a total

abolishment of age long practices that most Africanist would do anything to keep alive (Donnelly, 1984).

### **3.3 Research Design**

This research is based on a review of various literature both locally and internationally which includes reports on treaties, human rights journals, reports of international non-governmental organization, periodicals and many more, with the use of a qualitative case study and literature review method the researcher is assured at evaluating the clash between both ideas of Universalism and Cultural relativism using the Zambian state as a case. The proof by conclusions from known facts on this issue, shows the volume of research that has been put into this discourse where they have been factored into global human right structures both in Zambia and regionally branching into today's cultural aspects (Maleche & Day 2011).

The method of qualitative case study is generally utilized in order to clarify normative research questions that have often yielded inconclusive or contradictory results. This may be as a result of varying disagreements and incompatibility in empirical results obtained across various cases and also accompanied by various complex research issues. The method is therefore suitable in cases where diversity of the findings seems fundamentally irreconcilable (Baskarada,2014). Hence, the research work will be carried out using the qualitative case-based research method/ procedure in resolving the discourse specifically studying Zambia.

Although this research design methodology is deemed suitable for this work based on the nature of complexities surrounding the subject matter of Universalism versus Cultural Relativism where there is a clash of system between the Western model of

rights as expressed in the Universal Declaration of Human Rights and the cultural norms of Zambians. This is farther aggravated by the stance of the Zambian Constitution on customary matters.

It is expected of a researcher to fully understand the assumptions of the techniques combined with the ideological conditions necessary for the usage of such methodology. Hence it all implies that a researcher is mandatorily required to develop a research design fit for the specific problem he is about to either mitigate or totally eliminate and this design may differ from problem to problem (Kothari, 2004).

The first chapter of this work succinctly and precisely gives an introduction to the whole research by taking a historical view into the aspects of Universalism and Cultural Relativism as enshrined in both Article 22 of the Universal Declaration of Human Rights (UDHR) and Article 15 of the International Convention on Economic and Social Rights (ICESR) which identifies the rights to cultural norms and values where both are instruments of the International Bills Rights (Maleche & Day, 2011).

The second chapter of the research work discusses and evaluates extensively various literature that has previously analyzed the subject matter touching on the basics of Relativism of Culture and Universal Human Rights practice as it affects the people of Zambia. All of the above is said to be a function of the anomaly in the Zambian Constitution, the Bill of Rights that pays, little or no attention to the implementation and local enforcement of International and Regional ratifications on human rights matters.



The chapter three of this research work examines the research methodology which includes the introduction to the methodology, research design which specifically states the instrument that will be used in getting to the bottom of the research work while considering the complex nature of the topic, in addition there is the systematic literature review method and in conclusion the application of the above in the study.

Chapter four of the work discusses the normative conclusions reached based on the analysis in the literature review, scholarly conclusions as well as theoretical insights gleaned via an exhaustive reading of the most prominent research efforts on these important issues.

The last chapter of the research entails the summary, recommendations and conclusion.

### **3.4 Systematic Literature Review**

This review of literature has been able to help fuse information by an action of selective categorization with over thirty years of scholarly literature in addition with credible literature from renowned academic literature and researchers on human rights framework in an aim to find answers to the clash that seem to exist between the idea of Universality and Cultural relativity. The collection of the various literature spans from within the African continent, the South African sub region and the global community. Each of the reviewed paper has been able to in more than one way makes mention of the fact that human rights in the case of Zambia have been severally stipulated in its Constitution, yet the state pays little attention to a number of human right violations especially when it involves members of the opposition political class or a poor member of the society. In getting the right literature the

researcher made use of the internet, google scholar and other instruments. While trying to examine the clash of systems between Universality and Cultural Relativism a systematic approach is employed aimed at producing a limited but rigorous yet an ending analysis to the oddity.

### **3.5 Application of a Case Study Methodology**

Yin (1984) gave three requirements for the creation of a case study which includes:

- a) The nature of the research question that has been asked.
- b) The amount of control a researcher holds in the case of an actual event.
- c) Finally, the level of the discourse on modern matters (Tellis, 1997).

In protecting the African cultural values with the emerging wave of civilization across the nations which include the case study (Zambia) there is need for there to be a point of understanding between Universal Human Rights campaigns and proponents of the African traditions without making one superior over the other. In the application of this report, one needs to evaluate the uniqueness of the discourse while making available framework necessary to reduce the rate of human rights violations in the name of culture. The precautions provided as a result of this research will aid the application of systematic reviews in global and local human rights matters which will attracts quarters claiming to be custodians of the traditions. Establishing a structure for identifying the gap that exists between the concept of Universalism and Cultural Relativity.

## **Chapter 4**

# **FINDINGS ON THE POSSIBLE CONCILIATION BETWEEN THE WESTERN AND AFRICAN HUMAN RIGHTS MODELS**

### **4.1 Results**

This section is expected to make known the various findings with respect to the issues surrounding the clash of systems that exists between the perspective of Universalism against the age-long cultural indoctrination also known as Cultural Relativism as practiced by the people of Zambia with specific interest in its political willingness to adopt and attract globalization enshrined in the ideas of the Universal Human Rights Declaration. The results here presented are based on the research methodology implemented in this research work through a logical means of arrangement without any form of prejudice or bias.(Annesley, Thomas M., 2010) Furthermore, this chapter is essentially critical in answering the research questions previously asked in the chapter 3. Hence it will be of great importance to the relevance of this work in trying to get solutions to the problems as well as challenges being brought forward by the ideas of culture and human right frameworks.

### **4.2 Introduction**

In October 1998, the Zambian government consented to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also its party to various international treaties that prohibits inhuman

treatment of persons which are also implements that fights social, economic and cultural injustices such as the International Covenant on Economic Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).As a matter of fact, the Zambian government can also be said to have ratified more Charters and Conventions on human rights issues than any other nation in the Southern African region, but it is rather disheartening to note that the local enforcement of this treaties and ratifications has be seen on paper. Coming to the regional level Zambia is also a member of the African Charter on Human and People's Rights yet nothing significant can be said of its level of compliance within the local sphere. This African Charter is believed to proscribe in its article 5, any form of torture and inhumane treatment. (OMCT, 2001) In spite of, its paper allegiance to various international and territorial treaties on ground portrayal has largely been a daydream. It is believed that this trend of human rights abuses will be a continual phenomenon if issues that helps it grow is not adequately attended to by every stakeholder involve which includes community heads, political elites, NGOs and international donors. In the cause of this research, the researcher has been able to come up with findings that seem responsible for the clash of systems.

### **4.3 Universalism in Zambia Today**

Although the advocates of Universalism would of a great deal argue that the world's only culture should be hinged on the respect of human life and personal dignity which allows for the liberty to decide on what to do with one's life rather than

following a general consensus due to an ancestral practice tied to some baseless ideology.

Explicably the antagonists of Universalism passionately support the Relative Cultural Practice which they say is an identity which modernization cannot erode. Essentially, this work tends towards highlighting and emphasizing on how globalization and cultural norms can be united without infringing on another in line with modern realities and concepts. In addition, it is also key to be aware of the fact that cultural norms and values were set or promulgated by individuals that were respected in times past due to their social economic or political status at the time. The ideas of this persons could not have seen beyond the realities of the time though some will argue differently with respect to this idea, but they created laws that formed traditions and norms with the consent of the general people though their thought mostly is not in in sync with the current modern reality of globalization owing to the dawn of real time information technology (internet). The African ancestors at the time could not have known that there would come a time where race, color, language would no longer become a barrier to achieving global unification where there will be respect for everyone despite the social economic status of such a person. On the other hand, Universalism is believed to be a trap or perhaps a conundrum to some quarters because what some view as liberty is on the other hand perceived by another as an act of unimportance. Having said that, it is therefore necessary to revisit the research questions previously mentioned in chapter 3.

#### **4.4 Key Questions**

- 1). Are the claims of rights Universalism and Cultural relativism inherently reconcilable?

2). What are the measures that can be put in place to mitigate the effects of the clash between culture and human rights?

In answering these questions, the researcher would begin by highlighting relevant issues that has risen in terms of findings from the reviewed literature, journals and research papers highlighted in chapter 2.

It is absolutely striking, that the government of Zambia has intentionally decided not to take positive actions on certain parts of the Constitution (Bill of Rights)

There has been lack of willingness on the part of the people to discard some of the traditional practices with the mind-set that there will be some form of negative effect. In the various literatures reviewed one would see that the listed below are part of negative trends that makes for the argument which holds that there is a clash of system between the global Universalism perspective and the customary laws and practices in Zambia. They are but not limited the following:

- A) Spiritual repercussion
- B) Discrimination
- C) Societal belief
- D) Lack of awareness and education
- E) Poverty
- F) Challenges of incorporating international human rights into the Cultural life of Zambia without resulting into a deadlock.

#### **4.5 Reconciling Culture and Universality: Constitutional Perspective**

In answering the questions raised earlier, one would have to revisit the stance of the Zambian constitution with respect to this discourse which will provide a clearer

support for the argument surrounding the clash of systems that is, Universalism and Cultural practice. The constitution makes provision for the recognition and support of basic human rights and liberty especially in its article 11 which provides thus: It is recognized and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, color, creed, sex or marital status, but subject to the limitations contained in this part, to each and all of the following, namely:

- (a) life, liberty, security of the person and the protection of the law.
- (b) freedom of conscience, expression, assembly, movement and association.
- (c) protection of young persons from exploitation.
- (d) protection for the privacy of his home and other property and from deprivation of property without compensation and the provisions of this part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in this part, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest(Mwansa, 2008).

Furthermore, article 28 gives the enforcement of the basic human rights acts and freedom of the Constitution on every individual regardless of their principles. Judging strictly by the stipulations of the constitution, Western human rights protection on issues such as sexual orientation, same-sex marriage, women's reproductive rights amongst others should not be taken as a taboo in the name of either tradition or religious background because the Article 11 of the Zambian constitution vividly mentions and underpinned that it recognizes the rights and

freedom of everyone regardless of what they believe also making provision for the enforcement in the Article 28 (Mwansa, 2008). Reaching for a middle ground in this discourse would be the solution to the clash of ideology as it would create a balanced system where the Universalist accepts the Cultural Relativist and vice versa without the feeling of one's primacy over the other. Consequently, the universalist is allowed to share his wealth of knowledge with the various traditional communities in creating awareness for the need to embrace global best practices in handling human rights without prejudice. Putting in place the right mechanisms and instruments a gradual acceptance of both concepts would definitely emerge where the stronger will in the end erode the weak (weak cultural relativism).

## **4.6 Discussion of Findings**

### **4.6.1 The Government of Zambia**

The government has intentionally decided not to take actions on certain parts of the Constitution (Bill of Rights). Zambia is dual legal country that practices its customary laws which are in most cases verbal and the legal law which is the Constitution. The nation of Zambia is a signatory to the UDHR. In 1984 it also took part in accepting the ICESCR which implies that it is permitted by the law to activate the signed treaty or agreement via domestication of the laws and associated policies. As such the treaty mandates the state to implement actions locally on enacting the policies at the local level with the aid of appropriate legislative instruments. At the moment in Zambia the ESCR's in the state are being held with lightness where those rights are treated as privileges of the rich in mentioning they include the right to housing, food, education, health, sanitation and food. In sum, the UDHR and the Declaration of Vienna accords the same amount of importance to ESCR and CPR. Obviously, these rights are not being domesticated in Zambia and at the moment they



are not included in the Bill of Rights. Consequently, no form of legal redress can be brought forward to the courts against the Zambian State with respect to this (Mwapela, 2015).

#### **4.6.2 Lack of Willingness by The People**

In one of the literatures reviewed, the researcher corroborates the fact that there needs be an agreement between the perspectives of Universality and Cultural Reality due to adequate levels of consensus which can be reached through advocacy and campaign to the local communities. While considering current realities like the HIV/AIDS prevalence, dawn of the internet and many more rather being hell-bent on sticking to practices that has brought no significant growth economically and otherwise.

#### **4.6.3 Spiritualism**

Spirituality is deeply entrenched in African sociocultural life. This places more emphasis on spiritual/religiously influenced reasoning rather than exercising logic in reasoning and decision-making, hence they tend to attach so much spirituality to human-rights issues which often require common sense to be resolved. With the belief that “ancestral spirits” would be offended, many communities will consistently keep these practices in place because they do not want to be cursed by their dead ancestors as such they passionately oppose against tangible rights reforms from the Western world even if they are aware of some of the articulated benefits.

#### **4.6.4 Discrimination**

By definition discrimination means directly or indirectly giving a different kind of treatment to an individual on the basis of their race, gender, religion, conscience, belief, tribe, marital, ethnic, social or economic status(Amnesty International). Those who seem to have different opinion about what should be done or have a different set

of beliefs, are discriminated against. While they are treated as aliens or bastards. Yet they fail to realize that cultural preservation and adoption should be judged on the grounds of its relevance and general usefulness to the people it seems to guide. When a culture is being protected rather than protecting the people then something is wrong. This practically results in dignity erosion, breach of freedom and expression underpinned by the cry for cultural preservation.

#### **4.6.5 Societal Belief**

However, in the rural communities where the long-held traditional norms are practiced there is a mindset of closeness to the ancestors where they receive blessings from them. Alternatively, in the urban areas like Lusaka (Capital city) where there are new settlements they seem to care less about these values and norms due to the influence of the social media that is currently powered by the internet. As such there is some degree of understanding of modern global concepts tagged with universalism due to the metropolitan state of the urban areas although it is worth noting again that the Zambian authorities has shown little or no concern for issues bothering on Economic, Social and Cultural Rights which it has refuse to include in the Bills of Right.

#### **4.6.6 Lack of Awareness and Education**

Majority of the people of Zambia according to UNICEF are not educated. In 2010, its last census was conducted which showed that it has a population of over ten million people where it was recorded that just five hundred thousand are educated. Which is obviously less than one percent of the total population. In such a society, anything that has an undertone of westernization will definitely be unacceptable to such vast majority of unlearned people.

#### **4.6.7 Poverty**

A significant amount of the people of the Zambia reside in the neighborhoods with meager income and they particularly live below the poverty line. Hence, for instance a father that earns less than a dollar in one day with many female children will be looking forward to giving them out to any suitor provided he has the money. Consequently, child marriage is encouraged and supported due to imminent poor state of the parents also challenges associated with it spans through issues of pregnancy, childbirth, finance to run the home and many more.

#### **4.6.8 Challenges of Incorporating International Human Rights into the Cultural Life of Zambia (merging Universality with Cultural Relativity)**

In Zambia there are a number of ceremonies that contravenes or contradicts the universal human rights framework but that does not mean that the originators of these laws had ulterior motives for establishing those values. In the view of the Universal Human Rights Activists, the current violation or silence on human rights infringement cases by our Zambia authorities is not to be attributed to Cultural Relativism also it is worth noting that universal human rights shelters, identifies and encourages human dignity enshrined in cultural rights, heritage, liberty of thought and morality. Additionally, cultural rights basically come to a stop when it begins to infringe on the right, belief and practice of another individual. Symbolically the universal human rights serve as a sign for the commitment towards goodwill, peaceful coexistence and human dignity protection as such being greater in terms of its validity, universality, superiority and earnest form than any form of cultural value. Therefore, it will be particularly wrong to refuse global human rights precept on the reasons of cultural and traditional beliefs.

## **Chapter 5**

### **CONCLUSION**

In Africa today, there is a unique societal contrast which utilizes a mixture of practices ranging from religious to political and to cultural. This sequential arrangement is not constant as this is relative to the situation of the people either in times of war, colonization, civil unrest, or even political instability. The case may vary from region to region, or even country-wise. The current state of dualism being experienced in the African continent tends to allow for some merger between incompatible old values and relatively new ideas. In the past it has basically been the concept of stubbornly refusing to give up on their cultural values in light of global practices that naturally would seem unacceptable to Africans especially in the state of Zambia. Hence today again, we are beginning to witness a directed change channeled towards combining disparate elements in the philosophical systems based on cultures and views. As a result, “underdone” Westernization with its disruptiveness surrounded by lots of confusion in ideology acceptance and adoption is playing out gradually otherwise it could be viewed as an overambitious acceptance of modern practices. In sum, traditional value protagonists that completely idolize cultural relativism on the continent are seen to be heading south.

Therefore, in acknowledging the legal demands of respect of cultural differences and cultural relativism, one needs to be wary of the negative effect as well as skepticisms upon which these practices are hinged on as well as baseless notions that has taken

lives in the past and if not properly addressed will produce more harm now than ever. International law ought not to be shaped by the dissatisfactory unsuitability of human rights concepts currently viewed as a “Western ideal” by the government authorities in Zambia. The government has used its means of communitarian wording to at best subdue the minds of the locals, shielding a system which is clouded with huge levels of corruption and financial misappropriation. In other words, the cry and advocacy for traditional values (cultural relativism) is simply borne out of selfish interests and mere desire for arbitrary rule. More often than not, the intentional outcry and appeals against international human rights framework in Zambia by the elite class is not in actual support for the traditional values, but rather, an attempt at preserving the absence of basic rights as a tool of oppression which includes arrests without trial, illegal abduction, political high handedness amongst many others. (Donnelly,1984) argues that in the African traditional setting, the customs of the society normally will make provision for every member of the society with a volume of human dignity attached to it. As a result, the various degrees of human rights violations being experienced in most parts of Africa cannot be attributed solely to cultural traditions as the governments usually claim, indeed, most of those in the government are as hostile to cultural norms which promote right as they are to international human rights.

In light of the current realities of the twenty first century and contemporary conceptualization of rights, the modern-day African society seem to be carried away by the idea of civilization as depicted in the values enshrined in the Universal Declaration of Human Rights. The contextual idea of self- sufficiency, self-determination basically could be viewed as a parallel opinion which is in contrast

with communal relativity as observed in many communities across Africa. (Asomah, 2015) argues that if traditional beliefs were only made to rule the level at which complying is made with global standards, subsequently extensive infringement, abuse and disrespect of human rights would be made legitimate. Given the intentions behind the framing of human rights, violations on the part of the state would be given legitimacy under the guise of cultural relativism, where cultural norms that are harmful to human rights would be allowed primacy.

Dynamism of a culture or practice should allow it welcome new possibilities which will enhance transformation of the minds of those practicing this values and so preservation of culture can be achieved if it would not necessarily involve or result into violation of fundamental rights of the people no matter your location, age, gender and religion.

The term Universalism is all encompassing hence it is an umbrella for all human rights framework that applies to everyone on the planet. Human rights acts ought to be enacted to the lowest part of the Zambian society with other parts of the continent inclusive where people in authority and citizens should be made to come to terms with the fact that there are recent realities which various cultural practices of the past would not be able to cope with such as same sex marriage, transgender, issues and many more. In conclusion, the term Universalism is all encompassing hence it is an umbrella for all that applies to everyone.

## REFERENCES

- Ako, M. & Akweongo, P. (2009). The limited effectiveness of legislation against female genital mutilation and the role of community beliefs in Upper East The region, Ghana. *Reproductive Health Matters*, 17 (34), 47-54.
- Alston, P. (2005). 'Ships Passing in the Night: The Current State of the Human Rights and Development Debate seen through the Lens of the Millennium Development Goals'. *Human Rights Quarterly* 27 (3): 755, 814.
- Asomah JY. (2015). Department of Sociology, University of Manitoba, Canada. *Afr. hum. rights law j. vol.15 n.1 Pretoria* 2015 <http://dx.doi.org/10.17159/1996-2096/2015/V15N1A6> Available from [www.ponline.org/node/535042#sthash.GEcH4OSo.dpuf](http://www.ponline.org/node/535042#sthash.GEcH4OSo.dpuf).
- Brown, G. (2012). *Out of wedlock, into school: Combating child marriage through education*.
- Central Statistical Office (CSO) (2013). *Zambia 2010 Census of Population and Housing*.
- Central Statistical Office (CSO) (2014). *The adolescent and young women experience in-depth:using data to identify and reach the most vulnerable young women: Zambia 2010*. Lusaka.

Central Statistical Office (CSO), Ministry of Health (MOH), University of Zambia and MEASURE Evaluation (2010). *Zambia Sexual Behaviour Survey 2009. Lusaka: CSO and MEASURE Evaluation.*

Central Statistical Office of Zambia available at [www.zamstats.gov.zm](http://www.zamstats.gov.zm): Accessed 19th November 2012.

Chanda, AW. (2001). 'The Role of Lower Courts in Domestic in the Implementation of Human Rights,' *Zambia Law Journal*, Vol.33. (2001).

Changing attitudes, Ugandan Government Dismisses Bahati Anti-homosexuality Bill, available at <http://changingattitude.org.uk/archives/3321> [accessed June 11, 2011].

Children's Act No. 38 of 2005 as amended by Children's Amendment Act No. 41 of 2007.

Chondoka, Y. (1998). *Traditional marriages in Zambia: A study in cultural history.* Cambridge: *Cambridge University Press.*

Clark, S. (2004). 'Early marriage and HIV risk in sub-Saharan Africa.' *Studies in Family Planning*, vol. 35, No. 3, pp. 149–160.

Clark, S., Bruce, J. and Dude, A. (2006). 'Protecting young women from HIV/AIDS: The case against child and adolescent marriage'. *International Family Planning Perspectives*, pp. 79–88.



Committee on Economic Social and Cultural Rights, *General Comment 9 on the domestic application of the Covenant*. nineteenth session, Geneva, 16th November– 4th December 1998, E/C.12/1998/24 CESCR available at [www.ohchr.org/english/bodies/cescr/comments.htm](http://www.ohchr.org/english/bodies/cescr/comments.htm): Accessed January 2007. <http://wwwkenyaplex.com>: Accessed 12 March 2013.

Committee on Economic, Social and Cultural Rights, General Comment 3, *nature of state parties obligations* (Art. 2, para 1 of the Covenant) (Fifth session, 1990), compilation of general comments and general recommendations adopted by human rights treaty bodies, UN Doc HRI\GEN\1\Rev 1 at 45.

Connolly, C. et al.,(2008).*South African Medical Journal*: 98789-794.

Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

Convention on the Rights of the Child

Da Silva de Alwis, R. (2007). Child marriage and the law. New York: UNICEF *Legislative Reform Initiative Paper Series*.

Delap, E. (2013). *Protect my future: Why child protection matters*. London: Family for Every Child.

Deng FM (2006) Human Rights in the African Context. In: Wiredu K (ed) A Companion to African Philosophy. *Blackwell Publishing Ltd*, Malden, pp 499–508.

Department of State's International Religious Freedom Report at [www.state.gov/religiousfreedomreport/](http://www.state.gov/religiousfreedomreport/).

Divers, J.C. (2008). Laying down the knife may decrease risk of HIV transmission: cultural practices in Cameroon with implications for public health and policy. *U.S. National Library of Medicine, National Institute of Health* 2008 Summer;15(2):76-80.

Donnelly J (2007) The Relative Universality of Human Rights. *Human Rights Quarterly*. 29:281–306.

Donnelly J. (1984). Cultural Relativism and Universal Human Rights. *Human Rights Quarterly*, Vol.6, No. 4 (Nov. 1984), pp. 400-419.

EFSA Guidance for those carrying out systematic reviews European Food Safety Authority: Application of systematic review methodology to food and feed safety assessments to support decision making. June 2010 <https://doi.org/10.2903/j.efsa.2010.1637>

Eide, A. 2001. 'Economic, Social and Cultural Rights as Human Rights'. In A. Eide, C. Krause, and A. Rosas (eds). *Economic, Social and Cultural Rights*. Dordrecht: Martinus Nijhoff Publishers.

Emanuel, E., Wendler, D. and Grady, C. (2000). ‘What makes clinical research ethical?’ *Journal of the American Medical Association*, vol. 283, No. 20 (May), pp. 24–31, pp. 2701–2711.

Fox M., Reuters, Male Circumcision Does Not protect Women, (2009), available at: <http://www.abc.net.au/science/articles/2009/07/17/2628770.htm> [accessed 26.10.2011]. *The article cites studies done by Johns Hopkins University recorded in the Lancet.*

Fox, M. and Thomson, M., *HIV/AIDS and Circumcision: Lost in Translation*, *Journal of Medical Ethics* 36 (2010):798-801.

Green, L. et al., (2010). Male Circumcision and HIV Prevention: Insufficient Evidence and Neglected External Validity. *American Journal of Preventive Medicine* 39: P.479-82. [http://advocacyaid.com/ecdnewsflash/CEDAW\\_C-ZAF-CO-4\\_closing\\_comments\\_2011.pdf](http://advocacyaid.com/ecdnewsflash/CEDAW_C-ZAF-CO-4_closing_comments_2011.pdf) [accessed November 15, 2020].

Human Rights Commission, *Nhri Submission For Zambia’s Third Universal Periodic Review* -November 2017 [www.hrc.org.zm](http://www.hrc.org.zm)

Human Rights Watch, *Libya: A Threat to Society?*, February 2006, available at <http://www.hrw.org/en/reports/2006/02/27/libya-threat-society-0> [accessed June 14, 2011] at p. 1481.

International Commission of Jurists, Practitioners Guide No. 4, *Sexual Orientation, Gender Identity, and International Human Rights Law*, p.16.

International Covenant on Civil and Political Rights.

International Covenant on Economic Social and Cultural Rights.

Jahan et al (2016). Cureus. *Systematic reviews are ranked very high in research and are considered the most valid of medical evidence.*

<https://www.mendeley.com/catalogue/9434e7ff-331c-3b8b-93b0-c8fa0c26444f>

Koyana, D. S. & Bekker, J. C. (2007). The indomitable ukuthwala custom. *De Jure*, 40(1), 139-144.

Koyana, D. S. (1980). Customary law in a changing society. Cape Town: *Juta & Co.*

Lewis, H. (2009). Female genital mutilation and female genital cutting. *Northeastern*

*University, School of Law Faculty Publications*, Paper 4. Available from:

<http://hdl.handle.net/2047/d20001059>

Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, 1986.

Mackie, G. & LeJeune, J. (2009). Social dynamics of abandonment of harmful practices: A new look at the theory. UNICEF Innocenti Research Centre, *Innocenti Working Paper, Special Series on Social Norms and Harmful Practices*. Available from: [http://www.unicef-irc.org/publications/pdf/iwp\\_2009\\_06.pdf](http://www.unicef-irc.org/publications/pdf/iwp_2009_06.pdf).

Maleche, A., and Day, E., (2011), Traditional Cultural Practices and HIV: Reconciling Culture and Human Rights. *Working Paper for the Third Meeting of the Technical Advisory Group of the Global Commission on HIV and the Law*, 7-9 July 2011.

Maluleke M.J. (2012). Culture, tradition, custom, law and gender equality.s.

McInerney-Lankford, S. (2009). Human Rights and Development: a Comment on Challenges and Opportunities from a Legal Perspective. *Journal of Human Rights Practice*, 1(1), 51–82. doi:10.1093/jhuman/hun005.

Mswela, M. (2009). Cultural practices and HIV in South Africa. *Potchefstroom Electronic Law Journal*, 12 (4), 171-213.

Mubangizi, J.C. (2012). A South African Perspective on the Clash between Culture and Human Rights, with Particular Reference to Gender-Related Cultural Practices and Traditions. *Journal of International Women's Studies*, 13(3), 33-48. Available at: <http://vc.bridgew.edu/jiws/vol13/iss3/3>

Muhame G., Breaking News: *Anti-Gay Bill Returns to Uganda Parliament*, *Chimpreports*, available at: <http://www.chimpreports.com/index.php/news/3199-breaking-news-anti-gay-bill-returns-to-uganda-parliament.html> [accessed 26.10.2011].

Mute, L. M., *Africa not clear with LGBTI rights*, *Gay Activists Alliance Africa Kenya*, available at:

[http://www.gayactivistsallianceafrica.org/index.php?option=com\\_content&view=article&id=108:africa-not-clear-with-lgbti-rights&catid=1:latest-news&Itemid=18](http://www.gayactivistsallianceafrica.org/index.php?option=com_content&view=article&id=108:africa-not-clear-with-lgbti-rights&catid=1:latest-news&Itemid=18) [accessed June 11, 2011].

Mwale S. (2004). *Zambia's Economic, Social and Cultural Rights: Why Should they be in the New Constitution*. Lusaka: *Jesuit Centre for Theological Reflection*. (2004). [www.jctr.org.zm](http://www.jctr.org.zm) (last visited on 2nd Feb 2013).

Mwale, S. (2004). *Zambia's Economic, Social and Cultural Rights: Why Should they be in the New Constitution*. Lusaka: *Jesuit Centre for Theological Reflection*. [www.jctr.org.zm](http://www.jctr.org.zm)

Mwansa, A. (2006). 'Zambia at a glance' in G Robbers (ed) *Encyclopedia of world constitutions* (2006) 1030.

Mwansa, A. (2008). Law, religion and human rights in Zambia: The past, present and the practice. *African Human Rights Law Journal* pp. 546- 600.

Mwapela S. 2015 Economic Social and Cultural Rights: Prospects and Challenges for their Inclusion in the next constitution of Zambia. *The school of postgraduate studies*; University of Zambia.

Nakaweesi-Kimbugwe and Mugisha, Bahati's bill: A convenient distraction for Uganda's government, *Pambazuka News* (2009), available at <http://www.pambazuka.org/en/category/comment/59556> [accessed on June 11, 2011].

Nankani, G., J. Page, and L. Judge 2005. 'Human Rights and Poverty Reduction Strategies: Moving towards Convergence?' In M. Robinson, and P. Alston (eds). *Human Rights and Development: Towards Mutual Reinforcement*. USA: *Oxford University Press*.

Ndulo and Kent. (1996). *Constitutionalism in Zambia: Past, Present and Future*. *Cornell Law Faculty Publications*. Paper 64.  
<http://scholarship.law.cornell.edu/facpub/64>

Nmehielle, (2004). Development of the African Human Rights System in the Last Decade. *Human Rights Brief* 11, no. 3, pp. 6-11. Retrieved from <https://core.ac.uk/download/pdf/235404555.pdf>

OMCT, *The Least Developed Countries: Development and Human Rights*, 1990, pp 4-5.

Ontario Human Rights Commission <http://www.ohrc.on.ca/english/publications/>  
(accessed 15 February 2008).

Orphanhood and fosterhood report. Lusaka.

Oyowe, O. A. (2014). An African Conception of Human Rights? Comments on the Challenges of Relativism. *Human Rights Review*, 15(3), 329–347.  
doi:10.1007/s12142-013-0302-2

- Reddy V. (2001). *Homophobia, Human Rights and Gay and Lesbian Equality in Africa, Agenda No. 50, African Feminisms One*, pp. 83-87.
- Roberto M., Michele P., Alessia A. (2018) How do scholars approach the circular economy? A systematic literature review. *A journal of Cleaner Production* 178, 703-722.
- Roosendaal B. V. (2011). Homosexuality, a Clash between Cultures? *International Institute of Social Studies*. Available at: <http://www.iss.nl/DevISSues/Articles/Homosexuality-a-Clash-Between-Cultures>.
- Sabine, G. H & Thorson, T. L [1973]: A History of Political Theory, *Oxford University Press*, Oxford, p. 390-94.
- Shelley, S. (1993). What's culture got to do with It? Excising the harmful tradition of female circumcision. *Harvard Law Review*, 106, 1944-1961.
- Siddaway, A.P., Wood, A. M., & Hedges, L.V., (2019) : How to Do a Systematic Review: A Best Practice Guide for Conducting and Reporting Narrative Reviews, Meta-Analyses and meta-Synthesis. *Annual Review of psychology*, vol.70, pp. 747-770. [https:// www. scholars.northwestern.edu/how-to-do-a-systematic -review](https://www.scholars.northwestern.edu/how-to-do-a-systematic-review)
- Sipsma, H. L., Chen, P. G., Ofori-Atta, A., Ilozumba, U. O., Karfo, K., & Bradley, E. H. (2011). Female genital cutting: current practices and beliefs in western Africa. *Bulletin of the World Health Organization*, 90(2), 120–



127F. doi:10.2471/blt.11.090886 Retrieved from:  
[http://www.scielo.org/scielo.php?pid=S004296862012000200012&script=sci\\_arttext&tlng=pt](http://www.scielo.org/scielo.php?pid=S004296862012000200012&script=sci_arttext&tlng=pt).

Tellis, W. M. (1997). Application of a Case Study Methodology. *The Qualitative Report*, 3(3), 1-19. Retrieved from <http://nsuworks.nova.edu/tqr/vol3/iss3/1>

The Columbia Group for Children in Adversity (2011). An ethnographic study of community-based child protection mechanisms and their linkages with the national child protection system of Sierra Leone. *New York: Columbia Group on Children in Adversity*.

The Post Newspaper: 19 April 2003, p.1. *Mwanawasa Appoints a Constitution Commission*.

The Post Newspaper: 20th April 2010 edition. p.4 *Justice Deputy Minister Todd Chilemba Opposes Socio-Economic Rights in the Mung'omba Report*.

*Uganda Opposed to Homosexuality*, available at <http://allafrica.com/stories/201006040263.html> [accessed June 11, 2011].

*UNDP Human Development Indicators* available at [http://hdr.undp.org/hdr2006/statistics/countries/country\\_fact\\_sheets/cty\\_fs\\_ZMB.html](http://hdr.undp.org/hdr2006/statistics/countries/country_fact_sheets/cty_fs_ZMB.html): Accessed 22 November 2012.

UNICEF available at [www.unicef.org/infobycountry/zambia\\_statistics.html](http://www.unicef.org/infobycountry/zambia_statistics.html):  
Accessed 22 November 2012.

United Nations Population Fund Ghana 'Liberating slaves and changing minds:  
Starting at grassroots'  
[https://www.unfpa.org/endingviolence/html/pdf/chapter\\_ghana.pdf](https://www.unfpa.org/endingviolence/html/pdf/chapter_ghana.pdf) (accessed  
20 March 2014); *The government of Ghana '1992 Constitution of the  
Republic of Ghana'* [http://www.ghana.gov.gh/index.php/constitution/395-  
1992-constitution-of-the-republic-of-ghana](http://www.ghana.gov.gh/index.php/constitution/395-1992-constitution-of-the-republic-of-ghana) (accessed 1 September 2014).

Universal Declaration of Human Rights.

WHO, *Information pack 3 on male circumcision*, available at  
[http://www.who.int/hiv/pub/malecircumcision/infopack\\_en\\_3.pdf](http://www.who.int/hiv/pub/malecircumcision/infopack_en_3.pdf)  
[accessed 13.06.2011].

WHO, *Information pack on male circumcision*.

WHO, *Information Package on Male Circumcision and HIV Prevention*, Insert 2.

WHO, see: <http://www.who.int/hiv/topics/malecircumcision/en/index.html> accessed  
[June 14, 2011].

World Health Organization. (2008). *Eliminating female genital mutilation: An  
interagency statement (UNDP, UNECA, UNESCO, UNFPA, UNHCHR,  
UNHCR, UNICEF, UNIFEM, WHO)*. Available from

<http://www.who.int/reproductivehealth/publications/fgm/9789241596442/en/index.html>

Yin, R.K. 1993, *Applications of Case Study Research*, Sage, Newbury Park.

Zambia (2001): *Violation of Economic, Social and Cultural Rights, Violence and the Protection Against Torture*. World Organisation Against Torture (OMCT). Geneva, 2001.

Zambia, (1972): *Report of the National Commission on the Establishment of the One-Party Participatory Democracy in Zambia*. Lusaka: Government Printer.

Zambia, (1991): *Report of the Constitutional Review Commission (Mvunga Report)*.

Zambia, (1996): *Report of the Constitutional Review Commission Report (Mwanakatwe Report)*.

Zambia, (2004): Human Rights Commission. *Submission to the Mung'omba Constitutional Review Commission*.

Zambia, (2005): *Report of the Constitutional Review Commission Report (Mung'omba Report)*.

Zambia. (2000): *National Gender Policy*. Lusaka: Government Printers.

Zambia. (2008): *National Policy on Education*. Lusaka: Zambia Educational Publishing House.