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HUMAN RIGHTS COUNT! ZAMBIA

Country Assessment 2009



Network of Zambia People
Living with HIV/AIDS (NZP+)



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PEOPLE LIVING WITH HIV



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Acronyms

CSO	Civil Society Organisation
DFID	United Kingdom's Department for International Development
GIPA	Greater Involvement of People Living with HIV and AIDS
GNP+	Global Network of People Living with HIV
GRZ	The Government of the Republic of Zambia
HIV	Human Immunodeficiency Virus
HRCZ	Human Rights Commission Zambia
HRC!	Human Rights Count!
LTA	Leadership Through Accountability
NGO	Non-Governmental Organisation
NZP+	Network of Zambian People Living with HIV
PLHIV	People Living with HIV
SAfAIDS	Southern Africa HIV and AIDS information Dissemination Service
TALC	Treatment Advocacy and Literacy Campaign
TB	Tuberculosis
UK	United Kingdom
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNHCHR	Office of the United Nations High Commissioner for Human Rights
WAC	World AIDS Campaign
WILSA	Women in Law of Southern Africa
ZARAN	Zambia AIDS Law Research and Advocacy Network



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The Human Rights Count! is one of five evidence-gathering tools being implemented through the HIV Leadership through Accountability programme. The programme combines specific HIV evidence-gathering tools, national AIDS campaigns and targeted advocacy to achieve Universal Access to prevention, treatment, care and support. For more information about the HIV Leadership through Accountability programme please visit www.hivleadership.org.



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Country Executive Summary

1.1 Introduction

This study is part of the HIV Leadership through Accountability programme that aims to strengthen the evidence base around Stigma and discrimination, the level of involvement of people living with HIV, experiences in criminalisation of HIV transmission and human rights violations against PLHIV. The programme is being implemented in fifteen by Global Network of People Living with HIV/AIDS, the World AIDS Campaign, national networks of PLHIV and national Civil Society platforms with funding from the United Kingdom Department for International Development UK DfID). In Zambia, the programme is implemented by the Network of Zambia People Living with HIV and AIDS (NZP+)

The HIV prevalence in Zambia is at 14% among people aged between 15 to 49 years. This report documents findings on the experiences of HIV related human rights violations experienced by people living with HIV (PLHIV) in Zambia. There are numerous initiatives that have been formed to address the challenge of HIV and AIDS in Zambia, among them is the Network of Zambia People Living with HIV and AIDS (NZP+). NZP+ has 72 chapters across the 72 districts of the country. The chapters are variable in membership and structure.

1.2 Methodology

The data collection method involved the training of interviewers in administering the Human Rights Count! reporting questionnaire. Interviewers were trained from nine districts with each district representing a different province in Zambia. After the training, the interviewers went back to their districts and collected data about HIV related human rights violations in the course of carrying out their duties as NZP+ employees. The respondents were identified through a purposive sampling method and all reported their stories on a voluntary basis. This was sustained through the use of personal networks to raise awareness about the programme and encourage PLHIV to participate in the programme. This report documents HIV related human rights violations given by 28 respondents.

1.3 Implementation

NZP+, which was established in Lusaka in 1995, was selected as a major participant because it is a long standing, highly respected organisation with members and contacts throughout the country. Apart from NZP+, a number of other partners are involved in the implementation of this programme. The partners were chosen on the basis of unique positioning in national human rights issues, and their comparative advantage in supporting



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advocacy efforts, referral pathways, providing training and/or litigation support. It was also felt that their participation in the exercise would enhance their capacity.

1.4 Findings

Violation of human rights

The study recorded 42 violations from 28 respondents. The highest number of recorded violations were issues related to the right to work, the right to non-discrimination, and equality under the law which had nine reports each. Other reported violations related to the right to the highest attainable standard of care, the right to privacy, the right to favourable conditions of work and the right to own property. The respondents tied the experience of the violation to their HIV status in that the perpetrators were aware of the respondents' HIV+ status or suspected the respondent to be HIV+. In some cases, the link between the violation and the HIV+ status of the respondent was not very clear but these violations were also recorded because they constituted the respondent's perceptions of the experience which is important to acknowledge and respect.

The majority of the respondents reported suffering psychologically as a result of the violation they experienced. Some of the specific psychological effects cited were shock, hatred, and fear. Respondents also suffered economic, social and physical impacts.

The violations mainly took place in the context of work, but also in a family context. There were more violations perpetrated by men than by women. 42% of the respondents reported the violation of their human rights to various authorities. Others did not report their violations mainly because they did not know that they could report. This was compounded by the fact that respondents felt that such policies as were in place to redress violations were not being enforced, while others cited their lack of knowledge about the existence of policies and laws that are in place to protect PLHIV from HIV related human rights violations or to redress violations when they occurred.

Critical Issues

Some critical issues highlighted by this study are that the policy and legal environment does not adequately address the rights of PLHIV. This is worsened by the fact that there is a general disregard for human rights in many sectors of society. The findings also highlight the role of stigma in perpetuating human rights violations in that the perpetrators' actions were based on stigmatizing attitudes towards PLHIV. The research also found that PLHIV were, in some instances, so self-conscious about their status that they reported certain violation of their rights even though the action was not necessarily based on their HIV+ status.

Gender inequality compounds the degree of violation that HIV+ women face as compared to sero-positive males. The lower status of women correlates to the type of violations experienced by women and the gender of the perpetrators of the violations. Traditional and cultural practices that could be distinctively traced to particular beliefs and attitudes were also identified as playing a role in the type of violations experienced and whether or not these violations were reported.

The presence of NGOs like NZP+ seemed to influence the respondent's ability to seek support in redressing the violation of their human rights with such NGOs contributing positively to the redress seeking process. Another factor that contributed to seeking redress was the context of the violation. There were more efforts to seek redress for violations taking place within the work context than violations taking place within the household and family context.

UNAIDS in 2006 set out key policies to address HIV related human rights violations, with the focus being on community involvement and integrating human rights into HIV and AIDS programming. It is important to continue work on improving the policy environment. In the meantime it is necessary to look for immediate ways to deal with the root causes of the violations.

1.5 Recommendations

1. Implement a well resourced programme of dissemination of this report:

- Undertake a detailed mapping of Zambian policies and laws that impact positively or negatively on PLHIV should be done with the aim to recommend specific gaps, amendments and strategies for enforcement of rights.
- Advocate for the Zambian Human Rights Commission to establish a special unit to deal HIV related abuses.
- Civil society organizations should develop monitoring tools that will allow for ongoing tracking of HIV related abuses. These statistics can be used to advocate for changes in law and policy.
- Government departments should monitor HIV related complaints and methods of responding.
- A multi-pronged approach should be developed to ensure that the efforts of government civil society organizations and PLHIV are coordinated to ensure maximum protection of rights. One way of achieving this might be to establish local forums where people can come together to discuss what is working and challenges.



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2. Government must be challenged to take responsibility for taking reasonable steps towards ensuring that the rights of people living with HIV and AIDS are protected, respected and fulfilled. PLHIV and civil society organizations must be encouraged to take an active interest in policy and law reform to ensure that these needs are addressed.

3. Existing HIV and AIDS organisations must be lobbied to integrate human rights into their programming and engage with the communities they serve on how to contribute towards protecting the human rights of PLHIV

Introduction

The HIV Leadership through Accountability programme is a collaboration among the Global Network of People Living with HIV/AIDS (GNP+), the World AIDS Campaign (WAC), national networks of PLHIV and national Civil Society platforms. The programme is funded by UK DfID and combines specific HIV mapping tools, national AIDS campaigns and targeted advocacy for Universal Access. The programme will run for five years and involve 15 countries in total.

In Zambia, NZP+ has implemented programme tools by and for PLHIV, elaborated by GNP+ and its partners, aiming at strengthening the evidence on four key areas:

1. Stigma and discrimination ([The People Living with HIV Stigma Index](#))
2. The level of involvement of people living with HIV ([The GIPA Report Card](#))
3. Documenting and analysing current experiences in criminalisation of HIV transmission ([The Global Criminalisation Scan](#))
4. Documenting and analysing human rights violations against PLHIV ([Human Rights Count!](#))

2.1 Country Profile

Zambia is located in Southern Africa and has a population of approximately twelve million people. It is geographically divided into nine provinces. The prevalence of HIV in Zambia stands at 14% among the 15-49 year olds (CSO, 2009). There are more women than men infected with HIV at 16% and 12% respectively. The prevalence of HIV is higher in urban areas (20%) compared to rural areas (10%). With regard to stigma and discrimination, the CSO (Ibid) reports that 26% of females and 33% of males had accepting attitudes towards HIV related situations such as taking care of an HIV+ person, buying fresh vegetables from an HIV+ person and not wanting to keep HIV status a secret.

There are numerous initiatives that have been formed to address the challenge of HIV and AIDS in Zambia and among them is the Network of Zambian People Living with HIV and AIDS (NZP+). NZP+ has 72 chapters across the 72 districts of the country. The chapters are variable in membership and structure.



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2.2 About the Human Rights Count Programme

Throughout 25 years of HIV, people living with HIV have experienced and witnessed many violations of their human rights. 'Human Rights Count!' aims to document these violations, to aid advocacy against them and to devise long-term solutions. HIV-related human rights violations, stigma and discrimination affect all communities of people living with HIV, sometimes creating barriers to access to essential services. A broad range of rights are violated which impact on the ability of PLHIV to find employment, housing, medical care, education, etc. In the most tragic of cases PLHIV lose their lives in the struggle for equality. Steve Harvey, an AIDS activist in Jamaica, was murdered just before World AIDS day 2005, apparently because of his sexual orientation and HIV positive status¹. His death inspired the conception and formation of Human Rights Count!

2.3 Objectives of Human Rights Count!

- To document HIV related human rights violations against PLHIV;
- To raise awareness of human rights amongst PLHIV;
- To provide a quantitative and qualitative analysis of HIV related human rights violations against PLHIV across countries and regions and detect time trends;
- To inform future HIV and human rights related advocacy programming at national, regional and global levels through the building and sharing of evidence and documented cases;
- To mainstream HIV into the work of international human rights organisations;
- To lobby key change agents in response to reported rights violations.

¹ Retrieved from: <http://www.guardian.co.uk/world/2005/dec/06/gayrights.garyyounge> accessed on 10/10/2009

Methodology

The documentation is based on a PLHIV-driven methodology. Purposive sampling was used in the selection of the organizations dealing with human rights issues. Participants completed a predesigned questionnaire which allowed both self-completion and assisted completion.

Interviews for the Human Rights Count were conducted by six NZP+ District Chapter Coordinators and one District Programme Officer. Each of the nine Zambian provinces were represented in training as interviewers. Three districts (Lusaka, Nakonde and Solwezi) did not return any interviews. In Lusaka and Nakonde, logistical challenges prevented the implementation of the programme. In Nakonde, the trained coordinator could not continue with the programme after the training.

A total of 29 interviews were conducted by the seven trainees, in their chapters, over a period of four months (November 2009 – March 2010). The interview sites were located in Kabwe, Katete, Luanshya, Mongu, Namwala and Samfya districts. These sites were selected because they provided a balance between rural and urban settings and had the relevant structures and human resources to conduct the exercises. Additionally, the selected sites were fairly accessible via road and through communications channels such telephone and internet. So although the study focused on respondents in one district per province this was limited to the geographical area accessible by the area of operation of the interviewers. Interviewers were encouraged to raise awareness of the programme while carrying out their normal coordination/programme management tasks. This was not only an approach that the funding could support, but also helped ensure that only legitimate, traceable accounts were recorded. A snowballing approach was used by some District Coordinators to raise awareness about the study and encourage respondents to volunteer their stories.

The data was analysed thematically and the report written up according to the identified themes.

3.1 Limitations

The design of the questionnaire did not adequately address how the respondents could objectively identify an action that constitutes a human rights violation on the basis of HIV status. As a result, some reports of violations were based on subjective connections between an action and the respondent's HIV status.



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3.3 Implementation

In implementing Human Rights Count!, NZP+ collaborated with various partners. These partners were:

- The Zambia Police - Victim Support Unit,
- Treatment Advocacy and Literacy Campaign (TALC),
- Women in Law of Southern Africa (WILSA),
- Zambian AIDS Law Research and Advocacy Network (ZARAN),
- The Human Rights Commission, and
- The Legal Resources Foundation.

One of the first processes during implementation was a two-and-half-day training for the implementers of the programme at Zamcom Lodge on 15 – 17 September 2009. The interviewers were guided in overall implementation of the HRC!. This included an overview of HRC! and the rationale and adherence to ethical considerations for interviewers administering the HRC! questionnaire. Key to the process was a clear understanding of what constituted a human rights violation as against, say, stigma and discrimination. Participants also discussed strategies in accessing support from other partners including referrals to partner organisations for litigation and other assistance.

Following the training, the participants said they felt adequately prepared to implement the human rights count. Implementers in seven of the districts were then able to document stories from their communities and these were forwarded to the focal point person at NZP+ secretariat. The more serious cases were validated and checked to ensure that victims received support and/or protection from the perpetrators. The information from each questionnaire was summarised into one spreadsheet in preparation for analysis.

Findings

A total of 28 questionnaires were analysed. All except one highlighted individual experiences, while one questionnaire highlighted the experiences of a group. In total, there were 26 individual respondents and 2 respondents representing a group. The sizes of the groups they were representing were not given. The general characteristics of the respondents were as follows.

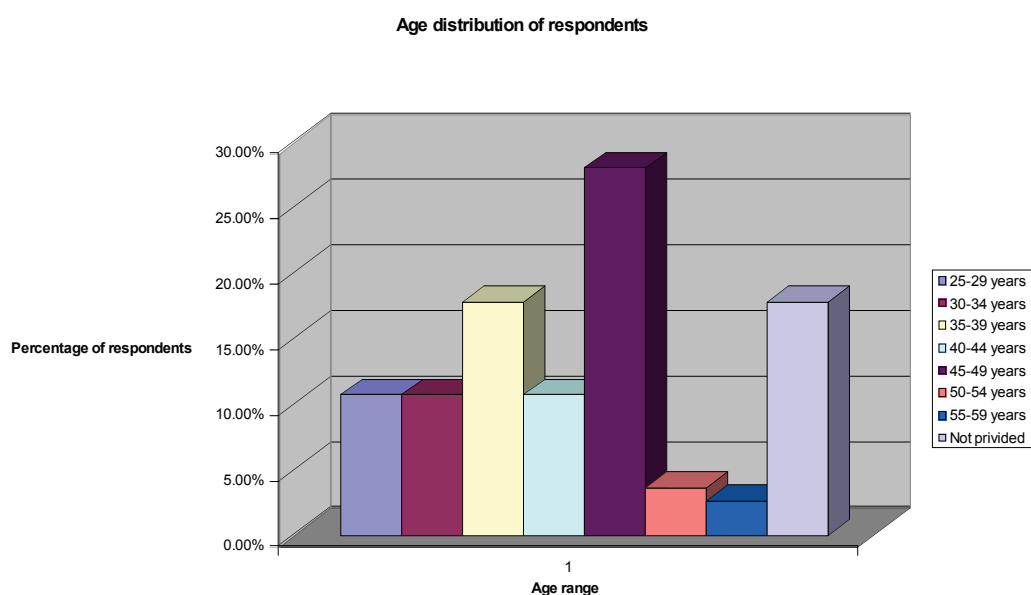
Demographic Characteristics

4.1 Gender

Fourteen males and fourteen females responded to the study. Of the fourteen females, two responded to the study as representatives of a group.

4.2 Age

The age range of the respondents was from 25 years to 59 years and this range was broken down into 5 year spans adopted from the ZDHS 2007. The youngest respondent was 27 years old while the oldest was 57 years old. The highest number of respondents fell within the age range of 35 to 49 years. The age distribution is shown below.



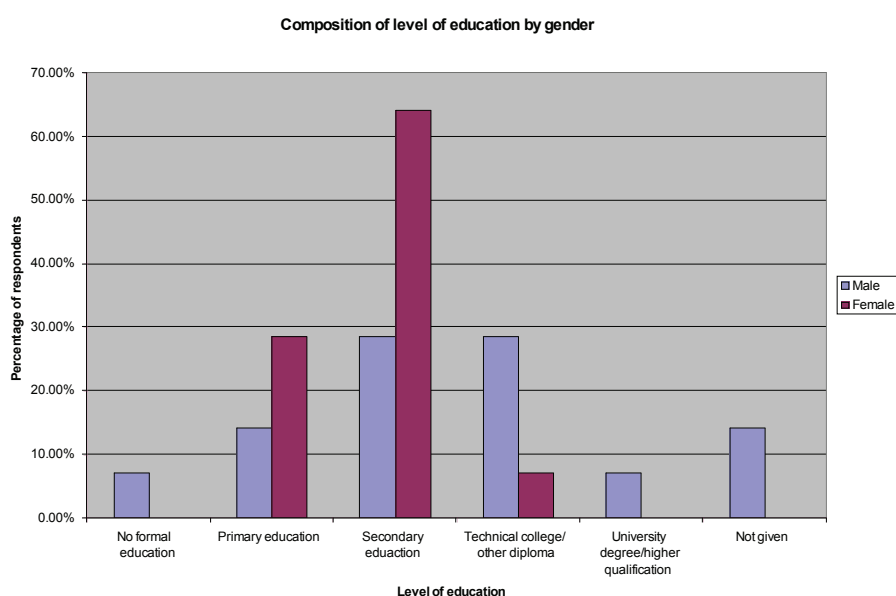
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4.3 Residence

Zambia is geographically divided into nine provinces and the Zambia Demographic and Health Survey of 2007 (CSO et.al, 2009) classifies two of the provinces as urban and the remaining seven as rural. The Copperbelt and Lusaka provinces are classified as predominantly urban provinces while Central, Eastern, Luapula , Northern, Northwestern, Southern and Western Provinces are classified as being predominantly rural. Following this classification, this study had responses from twenty two rural residents from Samfya, Luapula Province; Namwala, Southern Province; Mongu, Western Province; Katete Eastern Province and five urban residents from Luashya, Copperbelt Province; Lusaka, Lusaka Province; Livingstone, Southern Province and Kabwe, Central Province.

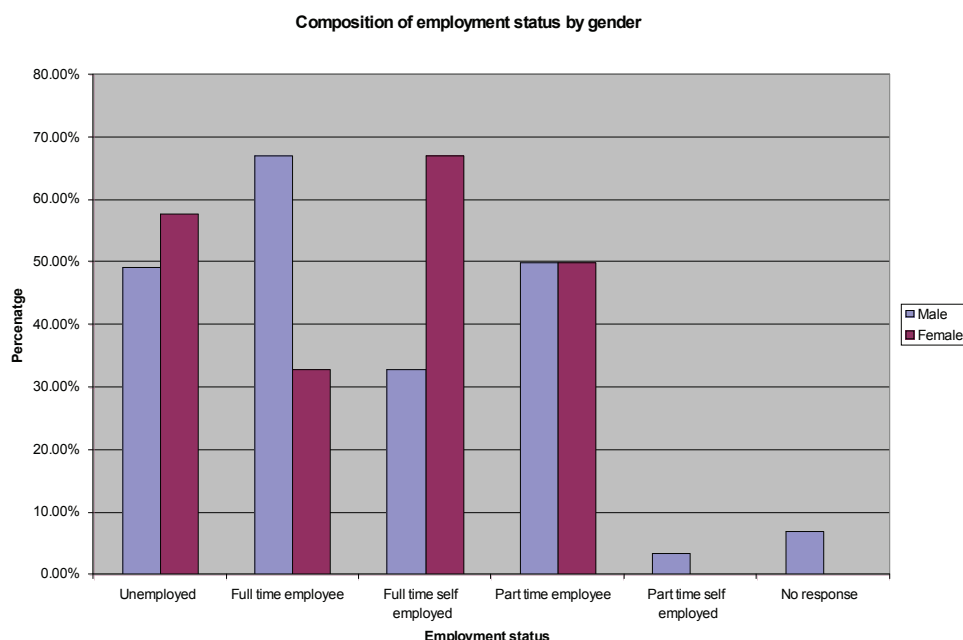
4.4 Education

The majority (85.7%) of the respondents reported having attained some level of education with the highest level of education being university education and the lowest being no formal education, as follows: university education 3.5%; Diploma or technical education, 17.8%; secondary education 46.4% and primary education 21.4%. The percentage of respondents that did not have any formal education was 3.5% while 7.1% of the respondents did not indicate their level of education. Disaggregated by gender, the levels of education where: for all females, 7.1% had diploma or technical education, 64.2% had secondary education and 28.5% had primary education. These results indicate that among the females that participated in the study, none had attained a university level education. On the other hand, there were more female than males that reported having attained primary and secondary education. For all the males, 7.1% had university education, 28.5% had a diploma or technical education, 28.5% had secondary education, 14.2 had primary education while 7.1% reported no formal education and 14.2% did not indicate what level of education they had attained. See chart below.



4.5 Employment

Half of the respondents reported being unemployed of which 57.1% were female and 42.9% were male. 21.4% reported being in full time employment as an employee, of this percentage 33% were female and 67% were male. For full time self employed respondents, the percentages was 10.7% composed of 67% female and 33% male. 7.1% were in part time employment as an employee and of this figure, half were male and the other half female. 3.5% were in part time self employment and all of these were male. 7.1% of the respondents did not give their employment status and all of these were male. A chart of employment status is shown below.



4.6 Vulnerable status

39% of the respondents saw themselves as a vulnerable population by virtue of being PLHIV. Other classifications of vulnerable status were 7.1% for pregnant woman, 3.5% for physically disabled, 3.5% for housewife, 10.7% for widowhood and 3.5% for divorcee.

Rights Violated

A table of the rights violated is given below. There are a total 42 reported violations, this was because some respondents reported more than one violation of human rights. The table gives the number of times that each right was reported as being violated and one example from the respondents. A comment on the classification of the right is given based on whether the respondents generally correctly identified the right being violated. A critical issue that was not adequately reflected in the responses was the issue of realistic as opposed perceived violation of human rights on the basis of HIV status. Seven respondents

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assumed that they had experienced a particular action because the perpetrator was taking advantage of their HIV status but did show a direct proof of a link between the violation of their rights and their HIV status. This table reflects reports as given by the respondents whether or not these were subjectively or objectively linked with the HIV status of the individual. This was done because the respondents reported the violation as being based on their HIV positive status.

Table 1: Table of Rights violated			
Rights Violated	Number of violations reported	Example	Comment on classification
Right to work	9	PLHIV discharged from armed forces was discharged from work based on HIV+ result from a test that had been taken without his consent	
Right to highest attainable standard of health	7	Pregnant PLHIV's status ignored when prescribing medication	This was clearly understood by respondents to include non medical factors that contribute to health for instance social and financial support
Right to privacy	6	PLHIV's status is revealed to other people by her family members without her consent	
Right to non discrimination and equality under the law	9	PLHIV given separate utensils to use because of her HIV status	Discrimination was mainly classified in a layman's context and not in the context of law enforcement. However, there were some classifications that included inability of the police to follow up on reports of violations though it was not established whether the lack of follow up was related to

Zambia

			HIV status or to general incapacity of the police that affects even people who are not HIV+
Right to own property	3	Land repossessed from PLHIV by local headman based on perception that the PLHIV would die soon	This right was not out rightly stated as having been violated but was classified by respondents as falling under right to non discrimination
Right to marry and found a family	1	PLHIV divorced on grounds that her spouse was spending too much money on her medical bills	This was classified by the respondent. Technically it does not constitute the violation of the right but does reflect the unfair treatment that women receive in the context of HIV particularly that they do not have equal status with their spouses in a marriage context
Freedom of torture and other inhumane treatment	3	PLHIV publicly insulted and blamed for husband's death by his family	This right was classified in the layman terms and not in terms of torture and inhumane treatment that would take place in an institutional setting such as a prison. One respondent under this classification reported the violation to police but no action was taken by the police even after the perpetrators disobeyed a summon

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Right to favourable conditions of work	2	PLHIV hospice employees forbidden to use face masks as part of their precaution equipment in the care of TB patients	
Right to national identity/participation in political life	1	PLHIV's national registration card withheld by his employer against his will	This was not specifically mentioned by the respondent. However, it was included here because possession of a national registration card is key to accessing services in Zambia. In this case, the respondent was not able to show a direct link between his HIV status and the withholding of his NRC.
Right to social security	1	PLHIV unable to access social security benefits because the national registration card he needed to claim the benefits was being held by his former employer	Classified by the respondent. No direct link established between his HIV status and his inability to access social security benefits especially his benefits are not held by the employer but by the national pension authority.

4.7 Reasons for violation

The respondents prominently stated that their rights were violated because of their HIV positive status. Other reasons that were cited as the basis of violation were: suspicion of being HIV positive, fear of contracting HIV from the respondent and ignorance on the part of the perpetrator that their behaviour constituted human rights violations. Some, less commonly, mentioned as reasons for violation: being blamed for a spouse's death, being disabled, searching for grounds for divorce and avoiding the perception that the respondents were stigmatizing their patients.

"The coordinator of the hospice passed a directive that the workers should not wear masks when attending to patients in the wards because according to her, they were stigmatizing the patients. We have contracted TB as a result of not wearing masks when working. This is mainly because we are HIV+ and are now exposed to highly infectious TB." (Group PLHIV, urban)

"This happened due to the husband's ignorance and negligence."

(Female PLHIV, rural)

"...I realized that all those relatives of mine failed to support my late wife, my children and myself in our own time of need due to their ignorance of issues of HIV/AIDS..." (Male PLHIV, rural,)

4.8 Impact of the violation

Nearly every respondent reported having suffered psychologically as a result of the human rights violation they had experienced. The range of the psychological impact included depression, anxiety, mental anguish, hatred, shock, and fear.

"Furthermore, we suffer from mental anguish as we are forced to continue to work in the (ward without facial masks)." (Group PLHIV, urban)

"...the result of what they did to me and my family is a massive hatred for all my relatives. When I became strong in 2006, I opted to live my own single handed life without any relative's concern. To date, 2009, this is how I live with my children." (Male PLHIV, rural)

The next most prominent impact was economic. Respondents cited this impact mainly with reference to the loss of employment related income that had resulted from the human rights violation. In some instances, the loss of income resulted from reduced financial support from family especially the spouse. This particularly applied to female respondents. However, there was one report of property grabbing perpetuated by a wife.

"Because I lost my job, I had no other means of getting money since I was sick."

(Female PLHIV, rural)

"... I lost my job and my wife deserted me while in Luanshya and admitted in the hospital. She hired a vehicle and collected all goods and said we were shifting to a bigger house...After loss of employment due to my sickness, I had no money and had to sell the remained properties." (Male PLHIV, rural)

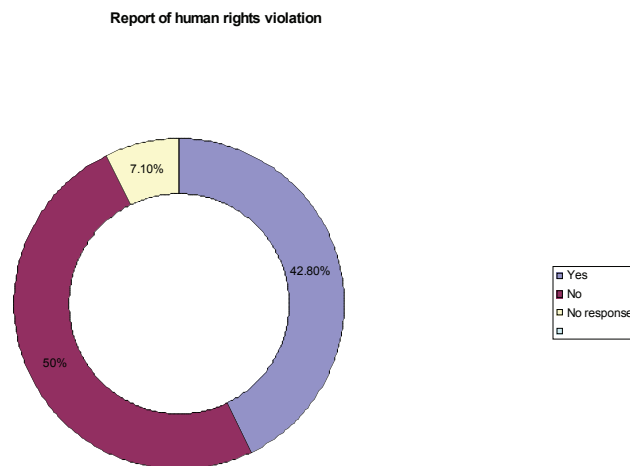
Other types of impact reported by the respondents include social impacts resulting from the loss of contact with family, friends and work colleagues, physical impacts such as suffering strokes and contracting tuberculosis. One participant reported having nearly had a miscarriage as a result of the violation of her right to the highest standard of care.

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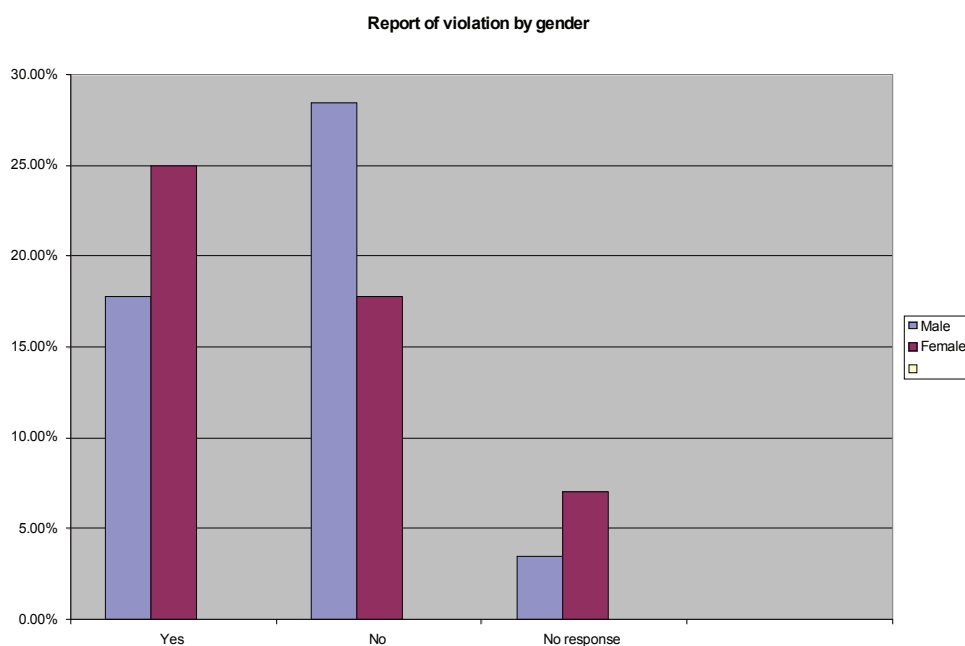
"I felt isolated because my family members were saying am dead whilst am still alive." (Female PLHIV, rural)

4.9 Protection from the government

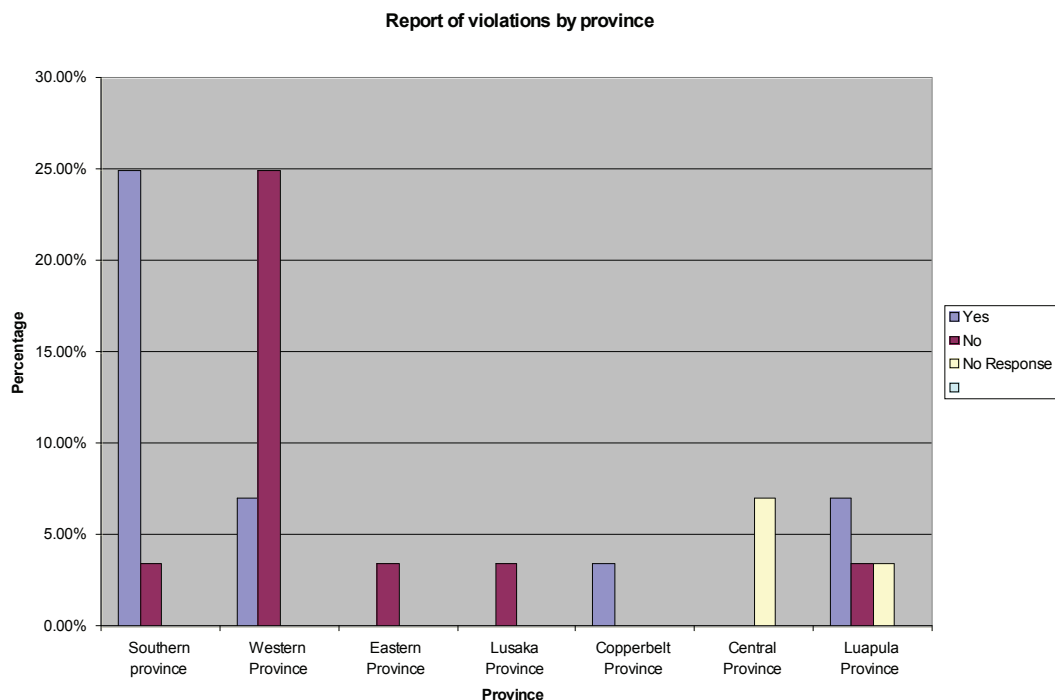
50% of the respondents did not report the violation of their human rights to the relevant authorities. 42.8% reported the violations while 7.1% did not provide a response.



Disaggregated by gender, the reports of human rights violations were as shown in the chart below. The chart shows there were more women (25%) who reported violations compared to about 17% of the men.



The chart below gives the breakdown of the reports of violations by locality. Namwala in Southern province had the highest percentage of respondents who reported the violation of their human rights at 25% while Mongu in Western province had the highest percentage of respondents who did not report the violation of their human rights also at 25%. These two provinces are the most comparable because they had a similar number of respondents, that is eight respondents from Southern province and 9 respondents from Western province.



The most common reason that respondents gave for not reporting the human rights violation they suffered was that they were not aware that they could report it. This was cited by 46% of the number of respondents who did not report the violations they experienced. The next most common was that the respondents did not know where to report the violation and this was cited by 30% of the respondents. Others (15%) did not report because they felt that they had adequately dealt with the issue and that the issue would be resolved within the family circle for those whose violations were perpetrated by family members. Others did not report the violation of their human rights because they did not want a family member to be arrested.

There was a general sense of dissatisfaction with the way the cases of those that had reported their violation were dealt with because the result of reporting the violation was not satisfactory in that the desired outcome was not achieved. For instance, one respondent reported to the police and the district commissioner that he was denied the opportunity to buy land because the seller of the land thought that the respondent would soon die from HIV. However, neither the police nor the district commissioner had taken any action over the course of four years. All except one of the work related violations had not been resolved.



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The one work related violation that was redressed involved a respondent who was reinstated after he reported to the district commissioner, NZP+ and the district health management team that his employer wanted to replace him on the basis that he would not recover from his HIV related illness. There were complaints about the length of time that some of the reported cases were taking to be resolved both through the legal system and through employer structures. For example, a respondent from the armed forces had sued his employer for dismissing him on the basis of his HIV status but the case was still in court. The cases that were resolved through an administrative process tended to be resolved more quickly than judicial processes. This is not uncommon as court processes are long and complex and depending on the court can take years to resolve.

46% of respondents felt there were laws and policies in place to protect people from HIV – related human rights violations but that the problem was that these laws and policies were not being adhered to or enforced. On the other hand, 39.2 % of the respondents felt that there were no laws to protect people living with HIV and that if there were any laws in place, their rights would not have been violated in the manner in which they were.

“Not aware of any policy which protects victims of HIV -related human rights violations.”(Male PLHIV, rural)

“If there were policies in place, such a big organization would not have acted in that way.”(Male PLHIV, rural)

“If there was any government policy, it would have been easy for me to report to the police.” (Male PLHIV, rural)

“The policies don’t go far enough to (protect,PLHIV, that’s why we are in court advocating for change.” (Male PLHIV, urban)

“She was discriminated against by her employer who discharged her because of her HIV status.” (Female PLHIV, urban) (explaining why she said there were no policies to protect against HIV – related human rights violations)

“There is an HIV AIDS policy and ART policy that should be followed by both the perpetrator and victim.” (Female, rural)

“The law clearly states how an employee who is unable to work is supposed to be treated including severance pay which should have included leave pay.” (Male PLHIV, urban)

"I know that if someone discloses your HIV positive status they can be sued but I don't want anyone to be in trouble or arrested." (Female PLHIV, rural)

4.10 Nature of perpetrators and context of violations

Close to 50% of the respondents reported that their rights were violated in an employment context and the person who violated their rights did so in the course of carrying out his or her job. The range of employment settings in which violations were reported included faith based organizations, AIDS service organizations, government ministries, private for profit organizations and the armed forces. About 40% of violations took place in the context of the family and were perpetuated by siblings and spouses, especially husbands, as well as extended family such as in-laws and aunts. In these cases the government failed to implement measures to prevent the violations or to adequately investigate the violation or punish the perpetrators. Some respondents reported having experienced human rights violations in both the employment and family circles.

60% of the perpetrators were male. This proportion includes males that were cited as being part of the violations perpetrated within the family context. 28.5% of the violators were female while 21.4% did not indicate the gender of the violators.

Critical Current Issues

There are a number of critical issues that have a bearing on the findings of this report. The first one is that under the current Zambian constitution Article 23, which addresses protection from discrimination, does not include the phrase "other status" as one of the characteristics that should not be used to discriminate against an individual. (GRZ, 1991) The grounds that are protected in Article 23 are race, tribe, and sex, place of origin, marital status, political opinion, colour and creed. The phrase "other status" has been acknowledged by the UNAIDS to include HIV and other health status (UNAIDS, 2006). The absence of the term "other status" limits the extent to which PLHIV can find protection for HIV related human rights violations under the constitution. In addition, if this critical area is not addressed in the constitution, then policy reform in other areas is likely to be a slow process. Zambia is currently undergoing a constitution review process. However, documents to indicate whether or not the phrase "other status" has been included in the revised bill of rights have not yet been made available to the public. Another issue concerning the bill of rights under consideration in the constitutional review commission was the inclusion of social and economic rights. Recent press reports have shown that the commissioners taking part in the constitutional review process voted against the inclusion of social and economic rights in the bill of rights. The argument for this was that it would be idealist to include these rights in the constitution and that government would not be able to sustain law suits arising from its inability to fulfill these rights. (Chanda, 2010; Chishimba, 2010).



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As seen in the findings of this report, social and economic rights such as the right to health and the rights to work lie at the centre of HIV related discrimination. Even though social and economic rights are argued by some to be non-justiciable, their inclusion in the constitution would be a demonstration of government's will to better the lives of its people. This would directly affect people living with HIV because it would give them the basis for holding government accountable for taking steps to ensure that these rights are protected and fulfilled. UNAIDS (2006) recommends that states have an obligation to protect all human rights regardless of the prevailing political, economic and cultural systems. The approach taken by the South African constitution could be followed here. The state has an obligation to protect social and economic rights "within available resources". This approach demonstrates the commitment of the state to protect these critical rights but also recognizes that there may not be resources available to ensure full recognition.

UNAIDS further affirms that the realization of all rights is key to an effective response to HIV. It could be because of these lapses in the constitution as mentioned above that human rights violations take place in government institutions such as the armed forces. Chuulu et.al (2001) highlights that in the defense forces, an HIV positive result is used to reject prospective recruits. One respondent detailed his experience as a member of the armed forces who was dismissed on the basis of his HIV status. He has since taken the case to court and at the time of writing this report, the court proceedings were still ongoing.

The reports of the Human Rights Commission Zambia of 2008 and 2009 (HRCZ, 2008, 2009) highlight another critical issue that has a bearing on these findings. For both years, the HRC reported that the human rights situation in Zambia was undesirable and that their data collection exercises had unearthed "unfettered" violations of human rights. The police, local and international investors were pointed out as having been perpetrators of human rights violations. The local and foreign investors were said to have a widespread disregard for labour laws and violations were observed in areas such as unjustified terminations and failure or refusal to pay terminal benefits. These violations were also evidenced in this report. If there is such wide spread violation of human rights in Zambian society, then there is greater need for organizations such as the HRCZ to consider the rights of people who by virtue of their circumstances, may be susceptible to human rights violations. This includes PLHIV. However, there is a glaring absence of the mention of HIV and AIDS and how they relate to human rights in the HRCZ reports. This masks an important issue because if HIV related human rights violations are occurring, the HRCZ should certainly address it. This absence is a serious disadvantage to the cause of protecting the rights of PLHIV.

The policy environment is another critical issue for the findings of this report. Chuulu et.al (2001) indicate that the law allows for an employer to ask for a medical examination to ascertain an employee's ability to carry out work including at a time when the employee may be ill but that HIV testing is not one of the tests required. Chuulu and colleagues add that the policy of the Zambia

Federation of Employers is that employers should not require an HIV test. The findings in this report indicate that some employers were taking their employees for HIV testing as part of the medical test and sometimes without the employees' consent. Once found HIV positive, some respondents in this study reported that they were dismissed on the basis of that result.

The process for seeking redress for unfair dismissal or for contracting an infection as a result of an employer's negligence in providing protective equipment were reported as follows:

1. Using the existing grievance procedures
2. Reporting to trade unions
3. Taking the issue to the industrial relations court or to the Commission for Investigation for public service, parastatal and statutory employees.
4. Seeking assistance from relevant non governmental organizations.

For those respondents that sought redress for the violation of their human rights, only one respondent reported a satisfactory resolution of his employment-related violation after his employer reinstated him. Some violations have not been redressed because of the refusal by the employer to address the problem. Other respondents are still awaiting the outcome of pending court processes. In some cases, as with the group of PLHIV employed in a hospice, redress for the violation of their rights was not sought for fear of losing employment.

The employment act stipulates the manner in which reasonable accommodation should be made for a person who becomes ill while in employment before that person can be dismissed on medical grounds. In the majority of the cases, the principle of reasonable accommodation seemed not to have been applied. In the one case where it was mentioned, the respondent still felt that his right to work had been violated even though he had been first retained on six months half pay and then dismissed on medical grounds owing to his inability to walk. There is therefore need to ensure that the measures that are put in place to protect people living with HIV are implemented in an objective and comprehensive manner and not just cosmetically.

In principle, there are a number of policy documents that can be used to protect the rights of PLHIV. ZARAN (2009) offers a comprehensive list of HIV related laws in a review document that seeks to analyse whether the laws can adequately protect against HIV related human rights violations or can be used to perpetuate them. From the findings of this report, there seems to be on the one hand, a general lack of awareness of these policies and how to use them to redress the violation of human rights and on the other hand, a disregard of these policies by employers and other people whose responsibility it is to protect those rights. This clearly leaves PLHIV at a disadvantage when they face HIV related human rights violations because they are unable to rely on established policies to seek redress.



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Discussion

The following themes were identified as influencing the trend of the findings in this report.

5.1 Stigma

Stigmatizing attitudes against PLHIV were the foundation of many of the violations. The respondents reported that their rights were violated for fear that they would pass on infection or that they would die soon. These perceptions are a reflection of the negative attitudes that the perpetrators had towards PLHIV. These attitudes are normally driven by misconceptions about the transmission of HIV, the incurability of HIV and the fear surrounding sensitive issues like death and sexuality (UNAIDS, 2005). Of the victims of HIV related human rights violations, only 1 respondent reported having experienced self-stigma. However, there seemed to be a heightened level of self consciousness among the respondents with regard to how their HIV positive status would influence the type of treatment they received from others especially in the context of power and domination which is strongly linked to stigma (UNAIDS, Ibid). This self consciousness may have made it possible for the respondents to interpret some actions that could not be directly linked to their HIV positive status as being violations of human rights based on their HIV status. For example, 1 PLHIV respondent had his national registration card withheld by an employer thus making it impossible for him to claim his terminal benefits. There was no indication that the employer was motivated by the status of the PLHIV. Another respondent felt that his employer took advantage of his HIV+ status and did not pay him the agreed salary because the employer was under the impression that he was in desperate need of employment and would tolerate anything to stay employed. In both these cases, the violation that the respondents suffered was not directly attributable to their HIV+ status but the respondents may have interpreted them as linked because they were self conscious about their status.

5.2 Gender inequality

Women who participated in this study faced a number of gender based inequalities. UNAIDS (2005) points out that women are more likely to be blamed as sources of infection and less likely to be accepted by society. A number of women in this study faced this bias. For example one HIV+ woman was blamed for the death of her spouse while another HIV+ man was rejected by his family for having married a wayward woman who had transmitted HIV to him. Other gender inequalities were seen in the way that at least two HIV positive women were denied access to medication by their husbands, one woman had her medication

hidden from her while another one was unable to travel to get a refill of medication because her husband refused to give her transport money. Ali, (2007) reported that women are often time unable to seek appropriate HIV related care and support because of gender based human rights abuses. The demographics of the respondents of this study also give an indication of the gender inequalities that may exist in the society of the respondents. For example, the female respondents had lower levels of education with no female respondent having a university qualification. Additionally, of the respondents that reported being unemployed, there were more females (57.1%) than males (42.9%). The lack of income among women was exemplified by one HIV+ woman who reported that her right to freedom of torture and inhumane treatment was violated because her husband had deserted her and was no longer providing for his children. Women are often unable to leave relationships where their rights are not respected because of their economic reliance in the relationship. In order for women to be able to leave these relationships, UNAIDS (2006) stresses the need to promote women's rights with regard to legal capacity, equality within the family, employment and participation in economic life.

Women, on the other hand, were more likely than men to report violations of their human rights. Although at face value this was a positive indication, it could also be a reflection of the general lack of support-seeking behaviour noted among men.

5.3 Traditional and cultural factors

In this study, Western Province and Southern Province are the two provinces that had a similar number of respondents and as such will be used to highlight some of the influences that culture and tradition may have on HIV related human rights violations. Western Province had the highest number of unreported violations at 25% while that of Southern Province was at 3.5%. Western Province is known to be a very conservative society where authority is not easily questioned. This could be reflected in the finding by CSO (2009) that Western Province had the lowest proportion of women who could decide by themselves how their income was spent at 9% compared to Central Province which was at 50%. In a conservative culture, it is possible that respondents were unable to access information around redressing violations of human rights because doing so would be going against established authority and practices. 4 of the 9 respondents from Western Province did not know that they could report the violation of their human rights while 2 of the 9 respondents felt that it would be dealt with in the family context. Southern Province had the highest number of reported violations at 25%. What is worth noting about the violations from Southern Province is that 4 of the 8 responses involved women whose rights were violated by their spouses or spouses relatives. Southern Province is known to culturally accept the practice of polygamy and this may in itself diminish the influence of women in a marriage relationship especially when the man intends to marry another woman. One HIV+ woman narrated that her husband was ill treating her mainly because he wanted to marry another woman.



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5.4 Support Seeking Practices

The main reason that respondents gave for not accessing the appropriate service to redress the violation of their human rights based on HIV status was that they did not know that they could report the violation and that they did not know where to report the violation.

Another variable that had an effect on whether respondents sought redress for violations they experienced was the context in which the violation took place. On the whole, respondents were more likely to seek redress for violations that took place in the context of the course of work than for violations that took place within the context of the family. In this regard, 8 respondents reported seeking redress for violations occurring in the course of work. Only 3 respondents reported seeking redress for non work related violations and these were mostly females who had suffered violations at the hands of their spouses. This finding raises the issue of how respondents dealt with systematic and on going violations of human rights in the context of the family. Respondents did not seek redress for violations taking place in the family context and chose other ways of dealing with the violation such as breaking ties with the family or hoping that the family would somehow collectively address the issue. These responses are clearly unsatisfactory options.

Because of limitations in the awareness of government policy that could protect against human rights violation and ignorance of where to report these violations, respondents tended to make use of other existing community structures, such as NGOs, churches, the District Commissioner's office and the district health management team to seek redress for the violation of their human rights. The respondents mentioned that Victim Support Unit of the Zambia Police Service was another place where they reported the violation of their human rights but that the response they got was often not satisfactory. The two most mentioned NGO's where respondents sought help were HODI and the Network of Zambian People Living with HIV (NZP+). These NGO's featured very prominently in reports from respondents in Southern Province.

Government has the primary responsibility to ensure that the human rights of all people, including PLHIV are respected and protected. However, the Human Rights Commission, in its report titled *State of human rights report in Zambia* (2008) notes that government structures such as the Police lack the institutional and infrastructural capacity to protect human rights. This is reinforced by Chapman (2009) who says there is generally weak political commitment to promote human rights and this is compounded by the lack of institutional and economic resources. An example of this in Zambia is that the government has not put in place deliberate strategies to create legal frameworks that would address the international HIV and human rights protocols to which the country is signatory (SafAIDS, 2008). This, taken together with the shortcomings in existing legislation, shows that the government is yet to develop the necessary capacity to protect the rights of PLHIV. The

existence of this gap makes it necessary for NGO's and other community based structures such as the church to take a role in the protection of the human rights of PLHIV. The UNAIDS (2005) has documented best practices of programmes dealing with HIV related stigma, discrimination and human rights violations. In the document, there are eleven principles for dealing with these violations. However, only two of these principles, adopting rights based anti-discriminatory policies and legislation and challenging discrimination and providing redress for violations, directly address the role of policy and legislation in dealing with HIV related human rights violation. Indeed, well written and applied laws are not the only measures that can benefit PLHIV (Gable et. al, 2008). The rest of the principles set out by UNAIDS focus on non-legal and community based actions that contribute to tackling HIV related human rights violations. Despite limitations in the policy and legal environment, communities can still contribute to addressing HIV related human rights violations and many entry points exist for doing so. These include leveraging existing services and programmes by explicitly and consistently integrating anti-stigma and anti-discrimination elements into programme implementation and service provision.

5.5 Vulnerability and HIV Positive Status

39% of the respondents saw themselves as a vulnerable population by virtue of being HIV positive. While it can not be denied that PLHIV face unique challenges, this self classification could be an indication of the level of despair and disempowerment that PLHIV see their circumstances. 7 out of the 11 respondents who classified themselves as a vulnerable population were unemployed and therefore that classification was not driven by HIV positive status alone but by how unemployment makes it more difficult to cope with being HIV+.



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Conclusion

This report has documented the human rights violations experienced by PLHIV on the basis of their HIV status. It has also highlighted some of the factors that contribute to the existence of human rights violations based on HIV status. From the identified factors, it is clear that there is no one approach that can provide a guarantee against human rights violations of PLHIV based on their HIV status. What is required therefore is an integration of approaches and responses that will encourage the establishment of a supportive legal and policy framework and support communities to take action to prevent and redress HIV related human rights violations in their context. Key to these approaches would be advocacy and the involvement of PLHIV.

Recommendations

1. Implement a well resourced programme of dissemination of this report:

- Undertake a detailed mapping of Zambian policies and laws that impact positively or negatively on PLHIV should be done with the aim to recommend specific gaps, amendments and strategies for enforcement of rights.
- Advocate for the Zambian Human Rights Commission to establish a special unit to deal HIV related abuses.
- Civil society organizations should develop monitoring tools that will allow for ongoing tracking of HIV related abuses. These statistics can be used to advocate for changes in law and policy.
- Government departments should monitor HIV related complaints and methods of responding.
- A multi-pronged approach should be developed to ensure that the efforts of government civil society organizations and PLHIV are coordinated to ensure maximum protection of rights. One way of achieving this might be to establish local forums where people can come together to discuss what is working and challenges.

2. Government must be challenged to take responsibility for taking reasonable steps towards ensuring that the rights of people living with HIV and AIDS are protected, respected and fulfilled. PLHIV and civil society organizations must be encouraged to take an active interest in policy and law reform to ensure that these needs are addressed.

3. Existing HIV and AIDS organisations must be lobbied to integrate human rights into their programming and engage with the communities they serve on how to contribute towards protecting the human rights of PLHIV



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