



Human Rights Commission

2010 State of Human Rights Report in Zambia: Human Rights & the Environment

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**“We do not inherit the earth from our ancestors, we borrow it from our children.”
(Native American Proverb)**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

(Article 1, Universal Declaration of Human Rights)



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ACRONYMS/ABBREVIATIONS

ADMADDE	Administrative Management Design
AIM	Agriculture Input Marketing Plan
ASHRR	Annual State of Human Rights Report
ASIP	Agricultural Sector Investment Programme
CBD	Convention on Biological Diversity
CBNRMPP	Community Based Natural Resources Management Program
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CSO	Civil Society Organization
DACO	District Agriculture Coordinating Officer
DDCC	District Development Coordinating Committee
DDT	Dichloro Diphenyl Trichloroethane
EAA	Extrinsic Allergic Alveolitis
ECAZ	Environmental Conservation Association of Zambia
ECZ	Environmental Council of Zambia
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EMP	Environmental Management Plan
EPB	Environmental Project Brief
EPPCA	Environmental Protection and Pollution Control Act
ESP	Environmental Support Programme
FAO	Food and Agriculture Organization
FNDP	Fifth National Development Plan
GDP	Gross Domestic Product
GMO	Genetically Modified Organisms
HIV/AIDS	Human Immune deficiency Virus/Acquired Immune Deficiency syndrome
HRC	Human Rights Commission
IAPs	Interested and Affected Parties
IAS	Invasive Alien Species
ICESCR	International Covenant on Economic, Social and Cultural Rights
IEA	Integrated Environmental Assessment
IPPP	Industrial Pollution Prevention Program
KCM	Konkola Copper Mine
MCM	Mopani Copper Mines
MDGs	Millennium Development Goals
MTC	Ministry of Transport and Communications
MTENR	Ministry of Tourism, Environment and Natural Resources
NAP	National Agriculture Policy
NEAP	National Environmental Action Plan
NGO	Non Governmental Organization
PACO	Provincial Agriculture Coordinating Officer
PFAP	Provincial Forestry Action Plan
PRGF	Poverty Reduction Growth Facility
PSRP	Public Sector Reform Program
RDCs	Resident Development Committees
SEA	Strategic Environmental Assessment
SNDP	Sixth National Development Plan
STIs	Sexually Transmitted Infections
TCA	Tourism Concession Agreement
UNCRPD	United Nations Convention on the Rights of Persons with Disability



UNDP	United Nations Development Program
UNEP	United Nations Environment Programme
UNESCO	United Nations Education, Scientific and Cultural Organisation
UNZA	University of Zambia
WHO	World Health Organization
WRAP	Water Resources Action Programme
WWF	Worldwide Fund for nature
ZAFFICO	Zambia Forestry and Forest Industries Corporation
ZAMSIF	Zambia Social Investment Fund
ZAWA	Zambia Wildlife Authority
ZCCM	Zambia Consolidated Copper Mines
ZCCM-IH	Zambia Consolidated Copper Mines Investment Holdings
ZFAP	Zambia Forestry Action Plan

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Enoch Mulembe

Director
Human Rights Commission

FOREWORD

The Annual State of Human Rights Report is the Human Rights Commission's flagship publication designed to operationalize the second Strategic Objective of its 2007-2011 Strategic Plan: *"By 2011 the Human Rights Commission will have positively influenced and monitored development and observance of key national and international human rights standards by all stakeholders"*. Additionally, it is also a strategy for:

- Advocating for policy and legislative reforms in Zambia;
- Effective planning, and monitoring Human Rights in Zambia; and
- Assessing, monitoring and evaluation of the performance of government in the domestic implementation of its international obligations for the protection and promotion of human rights in Zambia.

The 2010 Annual State of Human Rights Report (ASHRR) themed "Human Rights and the Environment" provides insights into the linkages between Human Rights and the Environment within an economic development perspective.

The right to development is one of the fundamental rights of individuals and states and is provided for under the International Covenant on Economic, Social and Cultural Rights (ICESCR). To this end, Zambia as many other developing countries embarked on a very ambitious path to development with a vision of becoming a Middle Income Country by 2030 as enshrined in Vision 2030 the country's blueprint for development. Consequently, the government has been producing medium term development plans to realise this vision. The fifth National Development Plan (FNDP) of 2006-2011 outlines the key drivers for economic development including Mining, Agriculture and Tourism all of which are based on the natural resources.

As a consequence, there are inevitable pressures on the environment including but not limited to massive land clearance with resulting deforestation, air and water pollution, increased generation of waste and a rise in the use of agricultural chemicals. The effects of these are manifested in a variety of negative consequences to human health and even with the current paucity of evidence at local level; it is becoming increasingly clear that a number of diseases and health problems are attributable to environmental degradation and pollution. This is in addition to the social effects such as labour issues, marginalisation and exposure of vulnerable groups including women and children to the harmful impacts of pollution.

In 1972, the United Nations Conference on the Human Environment (UNCED) made a direct link between the environment and the right to life. Two decades later, in 1992, the Rio Declaration acknowledged the right to a healthy and productive life in harmony with nature and the right of access to environmental information and of public participation in environmental decision-making. Since then, several initiatives have been undertaken by different bodies to further study this link between human rights and the environment.

This report therefore aims to show the following:

- the link between the promotion and protection of human rights and the environment; and
- development activities currently being undertaken and their effects on the enjoyment of human rights in relation to the exploitation of the environment.

Further, it will as an underlying theme emphasize whether particular vulnerable groups including women, children, persons with disabilities and persons living with HIV/AIDS are having their enjoyment of human rights affected by specific activities with regards the environment.

It is hoped that this report is a first step in fostering dialogue to mainstream human rights issues in traditional environmental management structures in Zambia. Further, through the issues highlighted in this reported, it is envisaged that the seeming disconnection between the protection of the environment and that of human rights will be dispelled. Additionally, it is anticipated that the various actors will ensure that the often marginalized in society will be protected as the country moves towards attaining economic development.



Pixie. K. Yangailo

Chairperson
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EXECUTIVE SUMMARY

Background

The linkage between human rights and the environment was established as far back as 1972 at the first United Nations Conference on Environment and Development in Stockholm-Sweden culminating into the well-known Principle 1 of the Stockholm Declaration recognizing the right to environment as a fundamental right under domestic law. Since then, initiatives have been introduced to strengthen this link further with the recent move by the United Nations Environmental Program (UNEP) and the United Nations High Commission on Human Rights (UNHCHR) debating how to revive these initiatives and address this link from a collaborative and institutional outlook.

In Zambia, the following are seven environment-development linked problems that can be highlighted as critical:

- Many Zambians suffer from the pollution legacy of many decades of mining.
- Zambia has the second highest per capita deforestation rate in Africa, and the fifth highest in the world.
- Zambia is a relatively significant per capita greenhouse gas producer, even though it is not an industrialised country.
- Many Zambians are vulnerable to climate variability and climate change.
- Zambia's wildlife continues to be threatened, in spite of recent improvements.
- Inadequate management of the environment partly explains Zambia's restricted development to date – in terms of poverty rates and low national income/savings.
- Inadequate clean water and sanitation.

As a result, key groups of poor people suffer 'environmental poverty' notably the urban poor and the remote rural poor; especially women, children, refugees and migrants within these two categories.

Given the above scenario, it is becoming increasingly clear that the current situation where Human Rights and the Environment are governed in a disconnected manner is a very dangerous state of affairs because it implies that the linkages between the two will not be adequately dealt with.

UNEP advocates that for there to be any meaningful discourse on the Human Rights and Environment linkage, at a bare minimum, the following spheres should be addressed: ¹

- ▶ Are the basic rights to a clean environment being upheld;
- ▶ In cases where the environment is being "used" for economic activities, are there resulting environmental impacts; and lastly
- ▶ Are the stakeholders included in the environmental governance at various levels in that particular jurisdiction?

This report therefore aims to answer these questions and provide an integrated assessment of the same using what is commonly known as the "DPSIR" Framework or "Driving Force-Pressure-State-Impact-Response".

Methodology

The process of producing this report was highly collaborative and consultative and a combination of methods was employed to this end.

¹ Perrez F, 2004, Key questions concerning the human rights and environment debate: An introduction' in UNEP, 2004, Human Rights and the Environment: Proceedings of a Geneva Environment Network roundtable. Geneva-Switzerland.

Data Collection methods and tools included:

- ☐ Thorough Review of Literature
- ☐ Questionnaire Administration and Interviews/Meetings
- ☐ Focus Group Discussions
- ☐ Case Studies (Best and Bad Practices)
- ☐ Field Visitations

Primary data was collected from the following provinces:

- ☐ Eastern Province- Lundazi and South Luangwa National Park in Mfuwe;
- ☐ Western Province- Mongu, Senanga and Kaoma;
- ☐ Southern Province- Livingstone;
- ☐ Central Province- Kabwe;
- ☐ Copperbelt Province- Ndola and Kitwe;
- ☐ North-Western Province- Solwezi; and
- ☐ Lusaka Province.

The following details the process that was followed:

- ☐ Training and Orientation of Research Team members;
- ☐ Preparation of Research Schedule & Tools;
- ☐ Review of Field work and re-aligning of tools & methods;
- ☐ Stakeholder Review Meeting;
- ☐ Roundtable Discussions with selected stakeholders – ECZ, ZDA, KATC;
- ☐ Expert Review (one Human Rights, Environment);
- ☐ Internal Review
- ☐ Incorporation of Comments
- ☐ Final consolidation of report.

SUMMARY REPORT FINDINGS

CHAPTER ONE - ESTABLISHING THE LINK- HUMAN RIGHTS AND ENVIRONMENT

According to the United Nations Declaration on The Right to Development, “Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from”. It further affirms that the right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and individuals who make up nations and that *‘the human person is the central subject of development and should be the active participant and beneficiary of the right to development’*. Universality and indivisibility of human rights and the principles of Equality and non-discrimination critical in the realisation of this right to development. Additionally, ‘States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices’².

The principles of Participation and Inclusion entail that: “States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights”³.

² Article 8(1) of the UN Declaration on the Right to Development

³ Article 8(2), UN Declaration on the Right to Development

Adopting a 'human rights approach' to development would therefore marry the pursuit of human rights and the objectives of the development agenda both of which are now believed to be two sides of the same coin. Human rights and human development share a common vision and a common purpose—to secure basic freedoms, well-being and dignity of all people everywhere⁴. Ongoing development activities reveal that they are based on the exploitation of the country's natural resources including Agriculture- land; Tourism- wildlife and water; Timber Processing- Forests; Mining- Minerals among others. This therefore implies that in Zambia, the Environment is a cornerstone for economic and social development. This therefore calls for the sustainable management of these resources.

Several international agreements discuss issues of Human Rights and the Environment including:

- ☐ The Universal Declaration of Human Rights
- ☐ The Rio Declaration on Environment and Development

These have compelled the Zambian government to embrace, support and enact a set of laws in the areas of human rights, labour standards, the environment and any other related area.

- ☐ Part III of the Republican Constitution
- ☐ Part IV- The Directives of State Policy
- ☐ Labor Laws
- ☐ Gender
- ☐ Children's rights

CHAPTER TWO - ENVIRONMENTAL GOVERNANCE: ACCESS TO ENVIRONMENTAL JUSTICE

Zambia is organized into three pillars in terms of governance: the Executive, Judiciary and Legislature. The Constitution is the supreme law of land under which are various pieces of legislation which set out the various roles of government functional units.

The Ministry of Tourism, Environment and Natural Resources (MTENR) is the principal ministry in charge of all environmental units while the Environmental Council of Zambia is its implementing agency.⁵ It must be noted that there are several other institutions that have as part of their mandates a bearing on environmental issues.

In terms of policy and legislation, Zambia has been addressing environmental issues with the evolution of legal instruments as follows:

- ☐ National Conservation Strategy of 1985
- ☐ National Environmental Action Plan of 1994
- ☐ Environmental Protection and Pollution Control Act of 1990⁶
- ☐ National Policy on Environment of 2007

Although not explicit, the pieces of legislation highlighted have Human Rights perspectives included in terms of access to information and revenue sharing. In order to respond to the various challenges met in their enforcement, a number of these and other legislation with a bearing on environment are under review.

⁴ 2000 Human Development Report on 'Human Rights and Human Development'.

⁵ At the time this report was going into publication, the ECZ had been changed to the Zambia Environmental Management Agency (ZEMA) and it was falling under the Ministry of Local Government, Early Child Development and Environmental Protection.

⁶ At the time of publication, the EPPCA had been repealed and a new Act known as the Environmental Management Act enacted.

CHAPTER THREE - SECTOR BASED APPRAISAL OF HUMAN RIGHTS AND ENVIRONMENTAL ISSUES

1. Timber Processing- the following were the findings:
 - a) Diminishing resource based as a result of increased investments and improved technology;
 - b) Locals vs foreigners- Mayukwayukwa Refugee Camp in terms of enforcement of laws by the Forestry Department;
 - c) Labor practices discriminatory e.g. different wages by gender in some industries;
 - d) Occupational Health and Safety standards flouted in most industries visited.
2. Agriculture
 - a) Vehicle for economic emancipation and food security
 - b) Increased usage of chemicals in the sector
 - c) Inadequate public awareness on dangers of chemicals thereby increasing exposure with elevated risks
 - d) Poor farming methods such as slash and burn, mono-cropping etc leading to severe land and soil degradation
 - e) Social ills such as divorces, wife battery, prostitution as a result of the seasonality of jobs in the sector
3. Mining
 - a) Diminishing Resource Base
 - b) Diversification from traditional Copper
 - c) Social Issues- particularly resettlement issues- World Bank Guidelines followed but multiplier effects not addressed e.g. sustainable livelihoods, “cultural shock” etc
 - d) Labor Practices- un-equal remuneration with foreigners, casualisation- 3 month contracts, OHS.
 - e) Environmental destruction- air, water and soil pollution
 - f) Land degradation
 - g) Health Effects such as respiratory, reproductive and neurodevelopmental impacts- Kabwe lead example

CHAPTER FOUR - REALISING THE RIGHT TO PARTICIPATION AND INFORMATION- THE ENVIRONMENTAL IMPACT ASSESSMENT PROCESS

- ☐ The regulatory environment does provide for participation and access to information. However the following were the perspectives of the local people on the process:
- ☐ Process is not inclusive to lowest levels of the community- uses formalized structures such as councils, chiefs etc;
- ☐ Documents (EIS') not easily accessible and understood by the locals- no translations;
- ☐ Inadequate political will negates potential gains;
- ☐ More opportunities for CSO engagement to widen community and popular participation.

It must however be emphasized that these views represent those of the locals where consultations took place and the legislators. ECZ, however, provided several instances and initiatives undertaken to ensure that the EIA process is more inclusive and the technical information is more simplified to reach the grass root communities.

CHAPTER FIVE - HUMAN RIGHTS, THE ENVIRONMENT AND THE PARTICIPATION OF VULNERABLE GROUPS

- ☐ Children- special group when it comes to environmental effects; most vulnerable, kabwe lead issue.
- ☐ Persons with Disabilities - often marginalized and left out of decision making structures, mobility a challenge
- ☐ HIV/AIDs- mostly issues to do with Occupational Safety exacerbating pre-existing conditions
- ☐ Women- CEDAW
- ☐ Access to land and other employment opportunities
- ☐ Tourism development and women- used as “sex symbols”?

CHAPTER SIX - CONCLUSIONS, RECOMMENDATIONS AND OUTLOOK

It is clear that even in Zambia, the linkage between environment and human rights from a development perspective is a strong one. The report has shown that while the governance framework exists to establish this link, there are a number of opportunities that exist to make it more concrete. While the constitution does guarantee the right to life and participation in decision making at various levels, this is not explicit to environmental and natural resource management issues; these are however mentioned in the Directives Principles of State Policy. The Environmental Impact Assessment Process is a vehicle that could be useful in realizing popular participation and access to information but several challenges exist in terms of post EIA auditing to ensure that obligations set out by the developers are actually followed through during and after project implementation. Further, issues of resettlements and their multiplier impacts still require to be looked into.

Lastly, the report has shown that vulnerable groups including the disabled, women and children are negatively affected by the exploitation of the environment for economic development. While various international and national legal instruments exist for their protection, there is however no link with the environmental sectors. For example, it was found that children provide “family labor” on farms in eastern province and thereby deprived their right to education. Additionally, women are exposed to very harmful chemicals thereby posing a danger to future generations given the reproductive roles they play in society.

There is therefore need to mainstream human rights concerns in all natural resource based sectors and conversely, human rights sectors must also be sensitive to the inclusion of environmental matters in their activities. The two sectors must be seen as two sides of the same coin.



CHAPTER ONE

ESTABLISHING THE LINK

HUMAN RIGHTS AND THE ENVIRONMENT

1.0 Introduction

Human rights are “universal legal guarantees protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity.”⁷ They are “claims which every human being is entitled to have and enjoy as of right by virtue of one’s humanity, independently of acts of law and without distinction on such grounds as race, gender, sex, pregnancy, marital status, colour, age, disability, national origin, religion, conscience, belief, culture, language, birth or social status.”⁸

The Universal Declaration of Human Rights (UDHR)⁹ in Article 1 states that “all human beings are born free and equal in dignity and rights...” Therefore, all are equally entitled to the enjoyment of human rights without discrimination. By nature, human rights are inherent, inalienable, universal, interrelated, interdependent and indivisible. Consequently, international human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

The inherence of human rights refers to the fact that they are the birthrights of all human beings and that they exist independently of the will of either an individual human being or a group of people. Therefore, they do not have to be given, bought, earned or inherited. They belong to each individual simply because they are human. As a matter of emphasis, one has to know that human rights are inherent because we are born with them and can best be described as entitlements, claims or benefits.

On the other hand the principle of universality of human rights entails that human rights are the same everywhere and this forms the cornerstone of international human rights law. The principle, as first emphasized in the Universal Declaration on Human Rights in 1948, is reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.

All States have ratified all or most of the core human rights treaties, reflecting consent of States which creates legal obligations for them and giving concrete expression to universality. It is equally important to highlight the fact that in customary international law some fundamental human rights norms enjoy universal protection across all boundaries and civilizations.

The other characteristic of human rights is that they are inalienable. This means that human rights enjoy a presumptive inviolable status and that they should not be taken away, except in specific situations and according to due process. No one can deprive another person of them for any reason and nobody can renounce these rights by himself. People still have rights even when the laws or policies of their countries do not recognise them, or when they violate them. For example, when discrimination on any given ground is practised, those discriminated against still have rights even though these rights are denied or violated.

Human rights are also indivisible, interrelated and interdependent. The indivisibility of human

⁷ Ref: The United Nations System and Human Rights: Guidelines and Information for the Resident Coordinator System” approved on behalf of the Administrative Committee on Coordination (ACC) by the Consultative Committee on Programme and Operational Questions (CCPOQ) at its 16th Session, Geneva, March 2000.

⁸ Human Rights Commission: 2008 Annual State of Human Rights Report (Simplified Version) p.1

⁹ Promulgated by the United Nations on 10th November, 1948

rights means that all human rights, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; or economic, social and cultural rights, such as the rights to a clean environment, work, social security and education, or collective rights, such as the rights to development and self-determination, are rights existing and must be enjoyed in a holistic manner.

All human rights are universal, indivisible, interdependent and interrelated. One cannot enjoy one right without the other e.g. Being denied the right to work due to one's condition of health is as good as being denied the right to life, social security etc National & international communities must therefore treat all human rights in a fair and equal manner, on the same footing, and with the same emphasis. That is why human rights are not in a hierarchy.

Human rights are said to form a claim upon the State. This particular characteristic entails that the duty to promote and protect human rights primarily falls on State. The State's obligations are both positive and negative. The positive obligation requires the state to protect, promote and fulfill human rights and this connotes the state's duty of performance while the negative obligation requires the state to abstain from violating human rights in laws, policies and practices and this connotes the state's duty of forbearance.

The obligation to respect human rights protects individuals from arbitrary interference with the enjoyment of their rights and further prohibits the state from performing, sponsoring or tolerating any practice, policy, or legal measure violating the integrity of individuals or infringing on their freedoms.

The obligation to protect human rights requires the State to prevent violations by others and that where violations occur the State should prevent/stop further violations while the obligation to fulfill human rights requires the state to take measures that move towards the realization of rights. The state should therefore put in place positive measures when other measures have not succeeded in ensuring full realization of rights.

From the above discussion, it is clear that there is a very strong link between the environment and human rights. Therefore, environmental issues cannot be dispersed with if the existence of human beings is to be guaranteed. This stems from the understanding that all human beings are entitled to the prudent use of the environment for survival, without threatening the existence of the future generation. Consequently, environmental rights cannot be devoted or divided from other rights because they are, interrelated and interdependent. The improvement of environmental protection and related rights facilitates advancement in the enjoyment and protection of other rights. Likewise, the deprivation of environmental related rights adversely affects and threatens the enjoyment of other rights. Using a human rights based approach, it is clear that issues of the environment are human rights issues.

1.1 Overview of Human Rights Protection and Environmental Management in Zambia

Despite the paucity of effective guarantees of environmental rights, human rights have become an important method in claiming and obtaining the fundamental aims embodied in environment rights. Environmental rights have been defined as both individual and collective, both substantive and procedural. More progress in articulating environmental rights has been achieved by applying the traditional human rights approach, namely giving the individuals access to information on environmental issues, the right to participation in decision making, and access to justice or the standing to challenge perceived environmental violations. Human rights approach may be relevant in fostering environmental protection, particularly with regard to access to information and safeguards against abuse of power, as a response to truism whereby human rights abuses continue to shield environment abuses.

Although the Constitution under the Directive Principles of State Policy (DPSP)¹⁰ proclaims environmental rights as being important, it does not necessarily indicate that these rights can be enjoyed in practice; their appearance is an expression of increasing commitment to recognize, respect, protect and promote them.

The Human Rights Commission was set up as a national human rights institution with a broad mandate of promoting and protecting human rights in Zambia. It was set up under Article 125 of Zambia's 1991 Constitution as amended in 1996 following the recommendations of the Munyama Commission of Enquiry that was tasked to look into allegations of human rights abuses during Zambia's first and second republic. Its mandate and powers are spelt out under the Human Rights Commission Act No. 39 of 1996 and includes among others:

- i. Investigating human rights violations;
- ii. Investigating any maladministration of justice;
- iii. Proposing effective measures to prevent human rights abuse;
- iv. Visiting prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the persons held in such places and make recommendations to redress existing problems;
- v. Establishing a continuing programme of research, education, information and rehabilitation of victims of human rights abuse to enhance the respect for and protection of human rights; and
- vi. Performing all such duties as are incidental or conducive to the attainment of the functions of the Commission.¹¹

The setting up of the Human Rights Commission was equally done in line the United Nations resolution No. 1992/54 of March 1992 adopted in Paris through the United Nations Human Rights Commission.¹² The resolution formulated guidelines with efforts to assist every member state to establish its own national human rights institution to have the basic responsibility of ensuring that fundamental human rights, civil liberties and freedoms are equally enjoyed by all persons without discrimination of any kind.

According to the Paris Principles, 'national human rights institutions(NHRIs) have to be established with the competence and responsibility of protecting and promoting human rights as well as having the composition that guarantees independence and pluralism',¹³ with a broad mandate so as to be able to promote and protect human rights.

The mandate of the Human Rights Commission is broad and therefore extends to environmental protection as this has a bearing on the enjoyment of other rights. All persons must therefore be guaranteed the right to a satisfactory environment favorable for sustainable development. This should be the case because an unfavorable environment may lead to health risks and pose a threat to the survival of mankind.

1.2 Sustainable Development

Sustainable development is a pattern of resource use that aims to meet human needs while preserving the environment so that these needs can be met not only in the present, but in the indefinite future.¹⁴ The term was coined by the Brundtland Commission of 1987, which created what has become the most often-quoted definition of sustainable development as development that "meets the needs of the present without compromising the ability of future generations

10 Part IX of the Constitution, Cap 1 of the Laws of Zambia

11 Section 9 of the Human Rights Commission Act No. 39 of 1997

12 The Commission has been abolished through the General Assembly Resolution No. 60/251 during the 72nd plenary meeting and established the Human Rights Council on March 15, 2006.

13 Kjaerum, M, National Human Rights Institutions Implementing Human Rights, Danish Institute for Human Rights, Martinus Nijhoff Publishers, 2003, p.6

14 Adams, W. M. (1990). Green Development. Routledge: London. Pp. 80-87.

to meet their own needs.” For there to be sustainable development there must exist three interdependent constituent parts: environmental sustainability, economic sustainability and socio economic sustainability.¹⁵

In 2001, the third president, the late Dr. Levy P. Mwanawasa re-introduced national planning at all levels. His government developed the ‘Vision 2030’ which forms the foundation upon which the Fifth National Development Plan (FNDP) of 2006-2011 and current Six National Development Plan (SNDP) of 2011-2016 have been anchored. Moving towards the year 2030, the vision is “total adherence to principles of good governance by 2030”. The goals are to:

- ☐ improve access to justice;
- ☐ effectively and efficiently manage free and fair elections;
- ☐ promote and protect human rights equality for women, men, youths and children;
- ☐ strengthen cooperation and collaboration among governance institutions;
- ☐ improve effectiveness and efficiency of the National Assembly to enhance its oversight of Government affairs;
- ☐ enhance constitutionalism and the rule of law;
- ☐ achieve a significant reduction in corruption in Zambia; and
- ☐ embed good corporate governance practices in the public and private institutions.

With this vision and subsequent national Development Plans, the country was well posed for political sustainability.

1.3 Towards Economic Sustainability

The Africa Economic Outlook 2007 indicated that Gross Domestic Product (GDP) grew by an estimated 5.8 percent in 2006, as a result of increased copper production, buoyant copper prices, an exceptionally good agricultural performance and a strong expansion in the construction industry. As expected GDP growth remained around 6 per cent in 2007 and 2008, as a result of increasing investment in mining and high demand for housing which resulted in further expansion of the construction sector. In tandem with a favorable economic performance, the macro-economic fundamentals have also improved in recent years. The government achieved a major fiscal consolidation and undertook public-sector reforms that triggered the cancellation of \$3.9 billion of external debt in 2005.¹⁶

Restored donors’ confidence translated into larger inflows of aid, increasing as direct budgetary support. The sharp appreciation of the kwacha experienced in late 2005 and early 2006, coupled with the 2006 bumper harvest, eased inflationary pressure, which averaged percent - the first time in about 30 years that Zambia had achieved single-digit inflation. However, despite the broadly favorable assessment by the International Monetary Fund (IMF) of Zambia’s recent macro-economic performance, the 2006 Poverty Reduction Growth Facility (PRGF) review revealed that sustaining broad-based growth remained a major challenge. The economy was modestly diversified and therefore remained highly vulnerable to climatic and trade variations. Copper mining companies were benefitting from substantial tax holidays and generated few spillovers to the rest of the economy.

According to the Living Conditions Monitoring Survey (LCMS) of 2004,¹⁷ as much as 68 percent of Zambia’s population fell below the national poverty line, earning less than K111, 747. The depth and severity of poverty also remains high despite the slight decline since 1998. Changes in poverty between 1998 and 2004 were evenly distributed across rural and urban areas. The incidence of poverty in the rural areas fell from 83 percent in 1998 to 78 percent in 2004, while poverty in urban areas declined to 53 percent from 56 percent in 1998.

¹⁵ *supra*

¹⁶ Africa Economic Outlook (2007); Africa Development Bank; available at <http://dx.doi.org/10.1787/562232728816> Sources: IMF and local authorities’ data; estimates (e) and projections (p) based on authors’ calculations.

¹⁷ Fifth National Development Plan; 1.4.1 National Vision

Considerable progress has been made towards the implementation of specific structural reforms across various sectors. The execution of sector wide programmes demands strong leadership and coordination. The Ministry of Tourism, Environment and Natural Resources (MTENR) has the mandate to provide an environmental policy framework, monitor, evaluate and co-ordinate its implementation, to ensure protection of the environment and sustainable development, management and utilization of natural resources for the benefit of the present and future generations. The ministry's main functions include coordination of national programmes and activities related to environmental activities. It is also responsible for coordinating statutory bodies dealing with environmental issues such as the Environmental Council of Zambia and further facilitates meaningful involvement of the CSOs in environmental issues. Until economic growth begins to be translated into uplifting and dignifying the lives of people in mining, construction, timber processing, tourism and agriculture with working mechanisms in environmental protection there cannot be economic sustainability.

As early as the 1970s "sustainability" was employed to describe an "economy in equilibrium with its basic ecological support systems". In a study on human rights in the tourism sector it has been stated that sustainable tourism will only be achieved when a level of tourism activity can over the long term result in a net benefit for the social, economic, natural and cultural environments of the area in which it takes place.¹⁸¹⁹ Ecologists have pointed to the "limits of growth" and presented the alternative of a "steady state economy" in order to address environmental concerns.²⁰ Peoples and cultures are put on display on postcards, promotional literature, and in their own homes when tourists arrive.²¹ This means that, to harness the positive benefits of tourism, developmental activities have to be carried out only within the ambit of an inclusive framework that shares the concerns of all the stakeholders. In other words, sustainable tourism will remain incomplete without including human rights of its stakeholders as one of its core constituents. Sustainable tourism will be restricted to mere environmental protection activities if we remove the vital element of human rights from its scope. The same principles apply to all the other sectors under review in this report.

1.4 Towards Environmental Sustainability

With full realization of the extent to which the national developmental agenda is based on natural resources, a fast growing population and rampant poverty, the drive to meet goals set out in national development policies and in international conventions, most recently defined in the Millennium Development Goals (MDGs), remains a challenge unless some basic advances are changed in the way environmental management is viewed by many.

With growing appreciation of the top priority need to eradicate poverty, it has been recognized that sustainable development must embrace natural resource conservation as an equal partner. It is also widely realized that successful campaigns to achieve lasting and effective economic and social development require a strong sense of ownership rooted in a firm community base built around effective local institutions.

The country's fate is predictable when it exhausts all its non renewable resources and the resulting pressure of environmental degradation increases due to poor environmental management. Indeed, the following are seven environment-development linked problems for Zambia that can be highlighted as critical:

- ▶ Many Zambians suffer from the pollution legacy of many decades of mining.
- ▶ Zambia has the second highest per capita deforestation rate in Africa, and the fifth highest in the world.
- ▶ Zambia is a relatively significant per capita greenhouse gas producer, even though it is not an industrialized country.

18 Babu P. George, Vinitha Varghese (2007). *Electronic Journal of Business Ethics and Organization Studies* Vol. 12, No. 2 (2007)

19 Hunter, C. (1997) "Sustainable tourism as an adaptive paradigm", *Annals of Tourism Research*, Vol.24 No.4, pp.850-867.

20 In this regard environmentalists want to see that sustainable development must tie together the carrying capacity of the natural system with the social challenges facing humanity.

21 Cohen, E. (1988) "Authenticity and commoditization in tourism", *Annals of Tourism Research*, Vol.15 No.3, pp.371-386.

- ▶ Many Zambians are vulnerable to climate variability and climate change.
- ▶ Zambia's wildlife continues to be threatened, in spite of recent improvements.
- ▶ Inadequate management of the environment partly explains Zambia's restricted development to date – in terms of poverty rates and low national income/savings.

As a result, key groups of poor people suffer 'environmental poverty' – notably the urban poor and the remote rural poor – and especially women, children, refugees and migrants within these two categories²².

The process of environmental degradation can be entirely natural in origin or it can be accelerated and caused by human activities. Environmental changes are driven and accelerated by economic growth, industrialisation, population growth, urbanization, intensification of agriculture, rising energy use and transportation. Moreover in developing countries like Zambia, poverty comes in as the root cause of several environmental problems as both cause and effect of environmental degradation²³. It spells out health hazards created by lack of access to clean water and sanitation, indoor air pollution from biomass stoves and deforestation from the need of solid fuels.²⁴

1.5 The Three Dimensions of the Human Rights-Environment Linkage

Any discourse on the "Environment and Human Rights" linkage should take into consideration the following issues²⁵:

- ▶ The right to a healthy environment: this is a fundamental part of the right to life and to personal integrity.²⁶
- ▶ Environmental destruction: this can be both a cause and an outcome of social discrimination. It has been observed that often, economically disadvantaged groups seem to depend more heavily on natural resources for their livelihoods and usually reside in areas where environmental problems pose a real threat to human health.
- ▶ Procedural human rights: these are discussed as they relate to access to information, access to justice and participation in political decision-making. In most decisions regarding the use of natural resources or location of potentially environmentally harmful industries, socially disadvantaged groups are left out of the decision making hierarchy.
- ▶ The report is organized into six distinct chapters each with a particular focus and designed to address one or more of the three dimensions of the Human Rights-Environment linkage discussed previously. Chapter 1 establishes the link between human rights and the environment and it is followed by Chapter 2 which looks at governance frameworks as they relate to access to Justice. Chapter 3 is a sector based appraisal of human rights and environmental effects of selected development sectors while Chapter 4 focuses on the Environmental Impact Assessment Process as a tool for realization of the rights to participation and information. Chapter 5 centers on vulnerable groups and the report ends with a chapter offering conclusions, recommendation and a general outlook of emerging issues.

22 Lubinda Aongola et al, 'Creating and Protecting Zambia's Wealth, Experience and Next Steps in Environmental Mainstreaming,' a publication of the International Institute for Environment and Development (IIED),

23 ECZ, 2000. State of the Environment Report. ECZ, Lusaka-Zambia.

24 Nyango'ro, J. (1992). "Africa's Environmental Problems," in A April Gordon and Donald, L. Gordon (eds) Understanding Contemporary Africa, Lynne Rienner Publishers: Boulder, Colorado. Pp 151-173.

25 Perrez F, 2004, Key questions concerning the human rights and environment debate: An introduction' in UNEP, 2004, Human Rights and the Environment: Proceedings of a Geneva Environment Network roundtable. Geneva-Switzerland.

CHAPTER TWO

ENVIRONMENTAL GOVERNANCE: ACCESS TO ENVIRONMENTAL JUSTICE

2.0 Introduction

This Chapter presents an analysis of the environmental governance structure that obtains in Zambia and how the same is a platform for access to environmental justice. This analysis is critical to the report in that it is not in dispute that the existence of defined institutions of governance play a vital role in securing and delivering justice to society even justice in the environmental sector²⁷.

With regard to governance, Zambia is a democratic republic anchored on principles of separation of powers and as such government exercises its powers through three independent organs comprising the Executive, Judiciary and Legislature. The executive power of the Republic is vested in the President who is the head of State and Government (Article 33(2) of the Constitution of Zambia. The Judiciary consists of the Supreme Court, High Court, Industrial Relations Court, Subordinate Courts, Local Courts and such lower courts as may be prescribed by an Act of Parliament. The legislative power vests in parliament (Article 62 of the Constitution). The Legislature comprises the President and the National Assembly and consists of 150 elected members and not more than 10 members are nominated by the President. The National Assembly is vested with powers to, among other things, make laws.

2.1 Environmental Governance In Zambia

In order to enhance the concept of good governance and access to environmental justice, the United Nations Environment Programme (UNEP) has developed a set of guidelines that would aid countries to provide a platform on which the public can access information and participate in decision making as far as the management of the environment is concerned²⁸.

UNEP suggests as follows when it comes to good governance:

“The concept implies among others that states and international organizations should

- (a) adopt democratic and transparent decision making procedures and financial accountability;
- (b) take effective measures to combat official and other corruption;
- (c) respect due process in their procedures and observe the rule of law more generally;
- (d) protect human rights and
- (e) conduct public procurement in a transparent non corrupt manner.

UNEP further states that:

“Good governance implies not only that civil society has a right to good governance by states and international organizations, but also that non-state actors, including business enterprises and NGOs should be subject to internal democratic governance and effective accountability. In addition, good governance calls for corporate social responsibility and socially responsible investment as conditions for the existence of a sustained global market that will achieve an equitable distribution of wealth among and within communities.

The Ministry dealing with Environment is the policy body whilst the Environmental Council of Zambia (ECZ) an autonomous body implements the policy of government. ECZ operates under an Act of Parliament. Other agencies of government with mandate having a bearing on environment are shown in th table 1 below

²⁷ This chapter is a contribution from Humphrey Kasiya Mwale based on excerpts from his final L410 Research Report (unpublished).

²⁸ UNEP, Guidelines for the Development of National Legislation on Access to information, Public Participation and access to environmental justice UNEP, Nairobi, 2010 at pages 2-6

Efforts to bring about policy direction in the area of environmental management can be traced back to the early 1980s when government formulated the National Conservation Strategy (NCS) which outlined government's policy direction in this area and the need for stakeholder engagement. The strategy also recognized the need for a clearly defined legal framework as

Institutions with a stake in environmental management

Ministry /NGO/Public	Agency /Organisation	Roles
Ministry of Finance and National Planning	Zambia Revenue Authority	Responsible for the allocation of financial resources for various developmental activities throughout the country. Collection of taxes and provision of tax incentives.
Ministry of Local Government and Housing	Local Authorities	Waste management service provision and operation of dumpsites, public awareness, formulation of by-laws. Development of waste management infrastructure
Ministry of Energy and Water Development	National Water and Sanitation Council	Regulation of water and sanitation
	Energy Regulation Board	Water quality monitoring Regulation of the petroleum and energy sector
Ministry of Health	Radiation Protection Authority, Pharmaceutical Regulatory Authority, Food & Drugs Laboratories	Regulate radiation matters. Role in the enhancement of sound management of clinical/healthcare waste
Ministry of Mines and Minerals Development)	Mines Safety Department, Geological Survey Department	Regulate issues of environment and safety in the mines including issues of waste management
Ministry of Science And Technology	NISIR, NSTC	Development of appropriate technologies
Ministry of Tourism, Environment and Natural Resources	Environmental Council of Zambia, Zambia wildlife Association, National Heritage Conservation Commission.	Responsible for development and articulation of policy on environment. .

Adapted from the National Solid Waste Management Strategy, (ECZ, 2004)

well as an apex body to oversee environmental issues in the country. As a result of the NCS, the Environmental Protection and Pollution Control Act (EPPCA), Cap 204 of the Laws of Zambia was enacted in 1990. The 1990 Act saw the birth of the Environmental Council of Zambia which is the body mandated with the protection of the environment and the control of pollution. In 1994, government proceeded to develop the National Environmental Action Plan (NEPAP) which brought to the fore the need to improve on environmental governance and recognized the right of an individual to a clean environment as well as the participation of communities in environmental management. The concept of community participation has been reflected in reforms in the forestry sector as well as the Wildlife sector where Community Based Natural Resources Programmes continue to be undertaken.

The current legal framework is such that the EPPCA is the principal Act on environment. The other pieces of legislation that have a direct bearing on the environment are shown in the table 2 below.

Relevant pieces of Legislation with a bearing on Environment

Name of legislation	Area of coverage
Public Health Act Cap 295	Prevention and suppression of diseases as well as control of nuisance
Energy Regulation Act of 1997	Regulates the energy sector
Zambia Wildlife Act	Regulates the management of wildlife
Local Government Act of 1991 Cap 281	Establishment of local authorities and local government administrative system
Ionizing Radiation Protection Act No. 12 of 2005	Protection of public from dangers of ionizing radiation
Mines and Minerals Development Act of 2008	Granting of, renewal and termination of mining rights

Source: Adapted from the National Waste Management Strategy (ECZ, 2004)

It must be stated here that whilst efforts of Government to bring about a regime for environment protection commenced well back at the beginning of the 1980s, issues to do with environmental governance are still not that entrenched in the Zambian governance structure. There is for example very little civil society involvement in the area of environment in comparison with other areas such as child rights, poverty, labour and other socio-cultural areas.

Further, a study on legislative representation and the Environment in Africa by the World Resources Institute yielded the following findings:

- a) Institutionalized incentives discourage legislators from performing their fundamental representation responsibilities;
- b) Local environmental issues are important livelihood matters for poor rural people, but for many legislators, the environment is of secondary concern;
- c) Legislators can support the livelihoods of rural people by effectively representing local environmental matters; and lastly
- d) Legislative representation of local environmental matters can nurture citizen involvement in political processes and strengthen democracy²⁹.

Notwithstanding the foregoing, it must be noted that the situation is changing. For example, the government of Zambia has through the Fifth National Development Plan (FNDP) recognized the need for sustainable development and the need to mainstream environment into the overall national planning. Further to the FNDP, the government has incorporated into the Vision 2030 an environmental agenda. During the time of the implementation of the FNDP, the National Policy on Environment (NPE) was concluded and adopted in 2007.

Further to the above, there is currently a programme supported by the Swedish Chemical Agency (KEMI) through UNDP to main stream chemical issues into the national development planning process. In addition, the government as from 2008 did espouse the concept strategic environmental assessment as a tool for mainstreaming environment. The process of Strategic Environmental Assessment (SEA) has commenced for the Malaria Control Programme, Petroleum exploration and development in addition to the tourism development programme for Kasaba Bay and Livingstone.

²⁹ World Resources Institute: On Whose Behalf?

The programmes alluded to above have attempted to employ the principles of good governance. For example, the chemicals programme operates at national level coordinated by a multi-sectoral committee which includes the private sector and academia.

2.2 Governance Secretariat and the Access to Justice Programme

The Government of Zambia as part of its efforts to entrench good governance set up a Secretariat at Ministry of Justice on governance. The implementation of the governance chapter within the FNDP saw the birth of the Access to Justice Programme (AJP) whose main thrust is access to justice in the criminal arena and targets women and other vulnerable sectors of society. The programme works closely with five identified institutions which are: The Zambia Police, Directorate of Public Prosecutions, Legal Aid and Zambia Prison Service. The programme seeks to increase communication, cooperation and coordination with the view of reducing and/or avoiding gaps in the implementation of the criminal justice system.

An analysis of the programme report³⁰ shows that justice in environmental issues does not fall within the ambit of the Programme. Whilst violations of the environmental laws in Zambia are criminalized, the current criminal justice system does not have a clear platform on which to embrace the principles of securing a future in which environmental justice is a reality.

2.3 The Constitution of Zambia And Environmental Justice

It is an indisputable fact that in modern environmental discourse, the promotion of environmental protection and sustainable development is fundamentally enhanced through the adoption of strategies and practices that secure a citizen's rights to access information, public participation and justice³¹. Provisions of the bill of rights contained within the constitution of Zambia reveal that the right to a clean environment is not guaranteed. One will find that the nearest right to the environment is the right to property but even then that right is clearly intended to cover property as in real property.

It is safe to mention that unlike in other constitutions such as the ones for Uganda and South Africa, the Zambian constitution does not guarantee the right to a clean environment. The Ugandan Constitution for example provides at Article 39 that "every Ugandan has the right to a clean and healthy environment". In order to secure this kind of right the Ugandan Constitution further provides for the right to access to information in the following terms, "every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person". This right of access to information is vital for the enjoyment of access to environmental justice.

The Zambian constitution on the other hand provides for the Directive Principles of State Policy (DPSP). The application of DPSP is contained in Article 110 which gives thus:

"The Directive Principles of State Policy set out in this Part shall guide the Executive, the Legislature and the Judiciary, as the case may be, in the-

- (a) development of national policies;*
- (b) implementation of national policies;*
- (c) making and enactment of laws; and*
- (d) application of the Constitution and any other law."*

³⁰ Ministry of Justice, Access to Justice Programme Annual Report, 2008

³¹ Bonilla M C et al Environmental Law in developing countries: selected issues Vol. II IUCN, Berlin, 2004. Page 17

The application of the DPSP may be observed only in so far as government resources are able to sustain their application or if the general welfare of the public so unavoidably demands, as may be determined by Cabinet [Article 110 (2)].

The DPSP are presented at Article 112. The principle that relates to environment is found at paragraphs (h) and (i). It can be deduced from the language of paragraphs (h) and (i) that government would not be bound if there was a failure on its part to fulfill these “rights”. In fact Article 111 provides that the DPSP are not justiciable. If the said right is only perceived as a directive principle that is not justiciable, it follows therefore that access to environmental justice may not be easily attained. What is also clear from the analysis of the current constitution is the absence therein of the other procedural rights important for access to environmental justice.

These are the right to access to information held by public bodies and the participation of the public in environmental decision making. It is important to underscore here that the current constitution of Zambia is in the process of being amended or replaced. The proposal of the right to a clean environment was espoused by the Mung’omba Constitutional Review Commission.

Article 75 of the Mung’omba draft constitution provides:

Every person has the right to -

- (a) an environment that is safe for life and health;*
- (b) free access to information about the environment;*
- (c) the protection of the environment for present and future generations; and*
- (c) compensation for damage arising from the violation of the rights recognised under this Article.*

From the above quotation, it is clear to see that the draft constitution went as far as espousing the procedural rights in the attainment of the right to a clean environment and these being the right to access to information and the right to compensation where there is damage caused. In contrast to the Mung’omba proposal, the National Constitutional Conference (NCC) departs from guaranteeing the right to a clean environment and does not in any way recognize the other rights that are a part of access to justice. The NCC draft constitution covers environment in the same manner as is covered in the current constitution leading to DPSP. It is quite evident that the State would not be bound in any way. What is interesting is that the NCC draft constitution imposes duties on citizens in more or less the same fashion as the current constitution (Article 298)³².

The right to access to information and the right to access to justice are also evidently absent. However, the draft constitution at article 299 (d) does make reference to the State encouraging public participation although it does not state how this would be done.

2.4 Comparative analysis between the EPPCA and the Environmental Management Bill Of 2010

The EPPCA as discussed earlier is currently the principal law on environment in the country. The Act establishes ECZ (Section 3), prescribes the functions (section 6) and further prescribes functions for each thematic area (sections 23, 36, 49, 58, 67, 72 and 76). With regard to access to environmental justice and the attendant rights of access to information and participation in decision making, the principal Act does not clearly present this area. The subsidiary legislation on environmental impact assessment (SI No 28 of 1997) does to some extent provide for the right to access to information.

³² This Article provides that every person has a duty to cooperate with the state organs and State Institutions and other persons- (a) to ensure ecologically sustainable development and use of natural resources; (b) to respect, protect and safeguard the environment; (c) to prevent or discontinue an act which is harmful to the environment; (d) to direct the appropriate authority to take measures to prevent or discontinue an act or omission which is harmful to the environment and; to maintain a clean, safe and healthy environment.

When it comes to appeal procedure, the Act seems to suggest that appeals against decisions of the Council as opposed to decisions of the Inspectorate lie to the courts. Section 95 provides:

- (1) A person aggrieved with any decision or ruling made by an Inspectorate under this Act, may appeal to the Council within forty-five days after the date of receipt of the ruling or decision.*
- (2) The Council within thirty days after the receiving an appeal, shall make and convey its decision to the appellant.*

It would appear that the intention of the legislature where one is not happy with the decision of the Council is that the aggrieved person appeals to the courts.

The Environmental Management Bill on the other hand has come in with some innovations which are clearly absent from the EPPCA. The preamble or long title makes specific mention of access to information and participation of the public in decision making. Under section 3, the Environmental Management Act would be supreme on environmental matters but only subject to the constitution. Section 4(1) of the Bill provides for a right to a clean and healthy environment. The right is enshrined subject to the constitution. Sub-section (3) of section 4 provides that a person may where the right in sub-section (1) is threatened or is likely to be threatened as a result of an act or omission of any person bring an action against the person whose act or omission is likely to cause harm to human health or the environment. The action by the affected person may seek to stop or discontinue the act or omission; it may also compel a public officer to take certain steps to prevent the contravention [(sub-section (4))]. Section 6 presents yet another innovation. This section introduces principles to govern environmental management in Zambia. The functions of the Agency as presented at section 9 are in similar pattern as the ones under the EPPCA. The bill at section 20 empowers the Minister to publish the State of the Environment. Section 91 of the bill, also provides for the right to access to information and public participation. Section 91 (1) and (2) creates the right of the public to be informed and the right to participate in decisions that affect the environment.

The Agency when established will be required to establish and maintain an Environmental Information Registry where different pieces of information will be deposited (section 90). Under section 108, the public may initiate the issuance of an order by the Director General. Prosecutions may also be initiated by the public (section 109). Where the Director General decides not to commence prosecution proceedings, the member of the public may proceed to do so (subsection 4 of section 109). In a case where a matter is brought to court by a member of the public, the court is prohibited from awarding costs (sub-section 6 of section 109). A civil matter for damages may be brought by any person where there is an act or omission in contravention of the Act and that the person need not be the one directly affected [Section 110(1)]. This brings to the fore the concept of standing. In this scenario locus is more liberal and not restricted. This concept is referred to as action popularis which means action to obtain a remedy by a person or a group in the name of the general public, without the necessity of representation authorization from the victims of the harm. Some states recognize this notion as an exception to standing **limits 82**.

With regard to appeals, the Bill introduces a procedure that makes appeals against the Board of the Agency to lie to the Minister without a procedure of how the minister would determine the appeal (sections 115 and 116). The Bill has similar approach when it comes to appeals against the Agency or Secretariat which under the EPPCA is the Inspectorate. Under the Bill the appeals against the Secretariat would lie to the Board (sections 112-114). This is similar to the approach under section 95 of the EPPCA.

There are however some cases that have been brought by ECZ, although the said cases are only at subordinate court level. This includes the case of the People v. Konkola Copper Mines

Plc³³ where the court fined the corporate entity about twenty two million kwacha for polluting the Kafue River contrary to section 24 and 91(1), 85(1) of the EPPCA Cap 204 of the Laws of Zambia. Another case is the case of the People v. Lusaka City Council³⁴ where ECZ commenced criminal proceedings against the Local Authority for operating the Chunga landfill contrary to the provisions of the EPPCA .

The court fined LCC nine Million Kwacha and ordered the convict Council to remedy the defects at the site. These are cases initiated by ECZ. It will noted that ECZ despite having been in existence for over 15 years has done very little in the area of litigation. It is not true that the situation is as a result of good compliance levels on the ground.

2.5 Additional Case Law with Regard to access to Environmental Justice

As alluded to earlier, there are very few cases in Zambia that have to do with environment and more with access to environmental justice. It is not difficult to conclude that the victims of environmental pollution are usually the communities within which industrial facilities operate. One of the early cases involving the environmental which was brought to the fore by the Environmental Council of Zambia is the case of *the People v. Indeni Petroleum Company Limited*³⁵ which case was heard in the Ndola Magistrate Court and the Ndola High Court when it came up on appeal. In this case the accused company stood charged with one count of discharging pollutants into the aquatic environment in excess of standards prescribed contrary to subsection (1) of section 91 of the Environmental Protection and Pollution Control Act No. 12 of 1990 as read together with Section 24 of the same Act. The fact of the case were that on a date unknown but between 1st February 1994 and 28th February 1998 did discharge oil containing effluent into the aquatic environment namely the Kaloko and Mukulungwe streams in excess of the prescribed water pollution control standards, Statutory Instrument No. 72 of 1993 which discharge was at a concentration of more than 50mg/l. The Magistrate, having warned himself on the burden of proof in criminal cases resting squarely on the prosecution, found that the State had proved its case beyond all reasonable doubt and as such convicted the accused company as charged. The Convict Company appealed to the High Court at Ndola against conviction but the appeal failed.

From the time of the judgment in the above case, very few cases were undertaken by the Environment Council of Zambia. With regard to public interest litigation which is an important aspect of access to environmental justice, there have been only about two cases in which the community concerned has taken action against the polluter and/or the Regulator for failure to execute its statutory duty. The first in this regard was that of *James Nyasulu and 2000 Others v. Konkola Copper Mines PLC*³⁶, *Environmental Council of Zambia*³⁷ and *Chingola Municipal Council*³⁸ and the second one being *Martha Mthize Kangwa and 27 others v. Environmental Council of Zambia and Nasla Cement Limited*⁴⁰. It must be noted that the foregoing cases are not yet concluded. It is envisaged that the same would be concluded in 2011. In summary the Nyasulu case, the community brought an action against the three defendants cited above on circumstances that bordered on pollution of the environment particularly the Mushishima Stream and the Kafue River in Chingola District. In summary, the Nyasula was an action by 2000 Plaintiffs who were residents of Chingola who brought an action on the premise that their source of water namely the Mushishima Stream and the Kafue River was polluted by the discharge of toxic effluent from its mining operations. The plaintiffs also alleged that the Second Defendant failed or neglected

33 Case in the Subordinate Court (Unreported)

34 Case in the Subordinate Court (Unreported)

35 SSN/51/1995 (unreported)

36 1st Defendant

37 2nd Defendant

38 3rd Defendant

39 Matter still in Court at The Principal Registry at Lusaka

40 Matter still in Court at the Principal Registry at Lusaka

to carry out inspections or supervise the pipes carrying the said effluent regularly. With regard to the Third Defendant, the Plaintiffs alleged that the Third Defendant failed to take adequate measures to mitigate and control the effects of water pollution on the supply and also failed to maintain sufficient supplies of water reserves in that premise.

The above cases will set a good platform for enhancement of public interest litigation in Zambia. It is clear that the current legal regime under the environmental Protection and Pollution control Act does not provide sufficient impetus for communities and individuals to access environmental justice.

2.6 Factors affecting access to Justice

As explained that the concept of justice under this study was incorporating the aspects of access to information and public participation, it is imperative to now consider what factors are present in a legal system such as ours that would impede access to justice. According to the Access to Justice Programme Specialist⁴¹, the following factors have an impeding effect on access to justice.

- Distance to the service providers: Many vulnerable members of the public reside in remote places which are far away from the service provision centers. For example a pollution incident occurs in rural Lundazi, the distance to the nearest police station is something like 100km. Further, the presence of ECZ is only in four places being Lusaka, Ndola, Livingstone and Chirundu. The individual will not make it in time and sometimes will not make it at all. The distribution of the service provision centers continues to be a big challenge. As we have seen for people to access justice they certainly need information as well as participation in the process of making decisions.
- Competence: This refers to competence on the part of the officers at service provision centers. Many a time the officers at the service provision centers are not trained and as such are not competent to handle certain issues. For example police officers who has no idea what pollution is and how to go about investigating the same will in most cases fail to bring about justice.
- Logistics: This relates mainly in the case of service provision centres to issues of transport and equipment. If for instance, there is a pollution incident, there is obviously need for transport to get to the site as well as equipment to help determine the levels of pollution and to also determine whether the pollution is one for which prosecution can attach. Additionally, the service centres also require equipment for data generation and storage. If there are no computers, it will be difficult for the service provision centre to provide information if what the member of the public requires is information. It was found that many of the service provision centres as assessed by the Access to Justice Programme were found to be lacking in the area of logistics. Many police stations do not have adequate transport to attend to complaints. In some centres, there are completely no computers and consequently data management becomes a serious challenge
- Lack of confidence in the justice system: this refers to a situation where the public loses trust and confidence in the justice system. Where the public thinks it is not possible to get justice from the courts or available administrative systems, then it becomes difficult one to even approach the service provision centres.
- Corruption: Where corruption exists, justice cannot be found.

Other factors that can impede access to justice are the issues of costs and locus standi.

⁴¹ Mr. Davies Chikalanga.

2.7 Standing in Environmental issues

The concept has developed over a very long time with the justice system. Locus standi is defined basically as the right one has to bring an action before a court of competent jurisdiction. To do so a person generally must be affected by the matter and there must be a case or controversy that can be resolved by legal action. Environmental cases can push the bounds of standing rules because people often do not hold individual, immediate or exclusive interests in the thing harmed. Environmental concerns often have a collective or shared nature⁴².

It is important to note that the Environmental Management Bill of 2010 has recognized this position. Section 109 of the Bill empowers a member of the public to request in writing the Director General to investigate an alleged contravention of the Act. Where the Director General decides not to investigate the said matter, the person who made the request may lay a charge and prosecute the matter and may seek assistance from any person in so doing [Subsection (4) of section 109]. This shows that members of the public have locus before the courts. In fact the Bill in section 110 (1) provides as follows:

“A person may sue for damages in respect of an act or omission that constitutes a contravention of the Act or that is likely to have an adverse effect whether or not that person or any other person has suffered or likely to suffer any loss or harm from the act or omission”.

It will be further noted that the Bill makes it clear that whether or not the person is affected or likely to be affected as a result of the action or omission that person will have standing and can bring action before court. This position is a significant departure from the traditional position on standing.

2.7 Costs as a Barrier to access to Environmental Justice


In the Zambian context, even the cost of buying summons can discourage members of the public or given communities. People have to pay guarantees. In a case by the community of Kafue contending against the decision of the Minister of Environment on the Kafue Iron and Steel Plant, the litigants had to abandon the cause due to the requirement for a deposit. Generally, it is accepted that for one to come before court there are certain requirements to be met. Firstly, the commencement especially in civil matters requires that one pays some money to the Judiciary for the summons. The cost of the summons may in many cases not be managed by the communities. The cost of hiring a lawyer is also quite prohibitive.

2.8 Conclusion and Recommendations

Access to environmental justice is a pertinent aspect of the protection of the human rights of individuals or groups particularly the vulnerable in society from the results of unsustainable environmental management or the negative social, cultural and health impacts of economic development. Environment and development should always be viewed as two sides of the same coin and this therefore implies that one cannot have one without the other.

As has been highlighted in this chapter, access to justice requires a robust system that provides a platform for members of the public to access environmental information as well as a platform that provides a niche for participation in the decision making process. These two aspects are important for access to justice since it is not possible to attain one without the other.

⁴² Bulska R, Principle 10 of the Rio Declaration, Page 21



Members of the public certainly need information for them to make informed decisions about their environment and how they can contribute to the overall development agenda. The idea is for the public to benefit from development as well as from the protection of the environment. Information is key even in the process of participation.

Whilst Zambia has been praised for making strides in the economic and social aspects of sustainable development, the environmental aspects still remain weak. It is worth recognizing that the government of Zambia has in the past five years been working on law reforms in the environmental sector. These reforms have certainly come with a lot of innovations which can be seen in the area of standing before courts and the costs associated with access to environmental justice as well as access to information and public participation.

CHAPTER THREE

SECTOR BASED APPRAISAL OF HUMAN RIGHTS AND THE ENVIRONMENT IN ZAMBIA

3.0 Timber Processing

It is estimated that forestry contributes 5.2% to Gross Domestic Product (GDP) in form of processed timber products and provides up to 1.1 million people with employment both in the formal and informal forestry sectors⁴³.

Zambia is endowed with forest resources covering an estimated 60% of the total 752, 614 km² land area of the country. In terms of distribution, Southern Province has the highest forestry coverage and Lusaka the lowest standing at 36% and 3% respectively⁴⁴. Forests provide both tangible and intangible benefits to the country and world as a whole in terms of their ecological functions. They perhaps have become increasingly important with the Climate Change phenomenon as they are the only natural sink for all the carbon dioxide produced from various natural and largely anthropogenic activities.

The Forestry Department anchored within the Ministry of Tourism, Environment and Natural Resources is responsible for the management of all forests within the country. It is governed by the Forest Act of 1973 which vests ownership of all trees and forest products derived from the national and local forests, customary land and local forest open areas in the President on behalf of the Republic of Zambia. It also confers the responsibility of controlling and managing the forests and forest reserves to the Forest Department⁴⁵.

According to the Ministry of Tourism, Environment and Natural Resources, forest reserves are in two categories:

Local forests: these are used for conservation and development of forests for security of forest resources; protection of land and water supplies of local strategic importance; improvement of forest resources management and sustainability of the use of forest resources at local levels; and to meet the social, cultural and economic needs of the people.

National forests: these are used exclusively for the conservation and development of forests for national impacts. These include the conservation of ecosystems and biological diversity; improving forests resources; and the management of major water catchments and water. (Joint Forest Management Guidelines: 1).

Of the total forest area, 44% is set aside for Production, 30% for both production and protection, while the remaining 26% is specifically for protection (ZFAP, 1997). Indications from Alajarvi (1996)¹ projecting forestry area during the 1996-2016 period are that depletion will take place more on the stocks under customary land tenure as opposed to those protected by the government.

The common woodland type is Miombo, which is mainly used for charcoal production and also provides fuel wood and construction materials. Most of the commercial tree species are used for timber processing and furniture manufacturing. In terms of timber processing, the Zambia Forestry and Forest Industries Corporation (ZAFFICO) which until 2001 was a government parastatal body is responsible for exotic forestry establishment, Saw milling and treatment of poles. Sawmilling is considered a well-developed forestry industry in the country. The

⁴³ CSO Publication.

⁴⁴ ECZ, 2001. "State of the Environment Report.

⁴⁵ GRZ Forestry Act

government has been trying to gradually reduce its role in the forestry industry by privatizing some state owned mills such as the Dola Hill and Kafubu Sawmilling.

Additionally, the Zambia Forestry Action Plan (ZFAP) of 1998, proposed a strategy for managing the forests to benefit local people living within or close to the forests. Following the ZFAP, the government formulated the National Forest Policy in 1998 which further recognizes the various roles traditional leaders and communities play in the utilization, production and sustainable management of the forests and their associated resources. It is within this policy that the use of local, traditional structures and partnerships with local populations are proposed. The private sector is also expected to prepare Joint Forest Management Area plans. The possibility of revenue sharing between the government and local communities ensuing from the development of the forestry sector is also explored.²

3.1 Is Timber Processing causing a decline in Zambia's Forestry Cover?

Timber processing has increasingly become commercialized and thereby rendering the local people un-competitive due to their use of traditional technologies and the high operational costs associated with the activity. This has resulted in their depending more on charcoal production as their main source of livelihood. Developmental activities occurring in the country have correspondingly increased demand for timber and timber products. This has led to increased exploitation of timber in the country for furniture making, construction and exploitation of non-traditional products such as honey and medicines.

There also seems to be inadequate appreciation of the non-tangible benefits derived from forests particularly their ecological functions. There is no direct benefit to local communities for the conservation of the forests leading to their mismanagement and indiscriminate exploitation. The advances in the technology used in timber processing has resulted in a heavy reliance on power tools such as chainsaws which have the capacity to cut down as many as 30 trees a day on large tracts of land in relatively short time intervals. These trees are then graded and the less useful ones dried and made into various useful products such as flash doors, and briquettes

Further, it has been observed that the enforcement of the law is partial in favor of foreign investors. In the Mayukwayukwa Refugee Camp of Kaoma District in Western Province, an incident was recorded where investors actually went into prohibited areas of the refugee camp to process timber but nothing was done about it by law enforcers. In similar instances, foreigners have been known to harvest timber from areas not covered by their licenses. This sadly is particularly not the case when locals are involved.⁴⁶

Even more unsettling were revelations from a proprietor of a private timber processing firm in Livingstone District, Southern Province. He explained that currently, the licenses issued by the Forestry Department to proprietors do not have a requirement for afforestation. There is therefore nothing to compel them to reforest areas from which massive deforestation is occurring. Further, the five year concessions given are not adequate for sustainable clearing resulting in the loggers indiscriminately harvesting timber even from small trees to maximize their yields within the tenure period of their licenses.

3.1.1 Human Rights Issues and Timber Processing

As a consequence of the various drivers outlined previously, there are a number of issues concerning human rights associated with timber processing.

⁴⁶ FDG held with local communities within the Mayukwayukwa Refugee Camp in Kaoma.

3.1.2 Economic Implications

For the local communities, timber processing is a viable economic activity providing jobs to people at various stages of the process. Subsequently, theft and labor migration have reduced as families have expendable income even to the point of sending children to school. However, it has in some cases replaced farming causing food scarcity within the community. The non standardized remuneration packages offered to the local workforce by investors defraud locals of income making them gain so little from what is a physically taxing occupation. It was found that in some companies, women were paid less than their male counterparts for the same type of work.

3.1.4 Environmental Implications

- The environmental impacts due to deforestation are several. They include:
- Reduced canopy cover- this is due to annual bush fires destroying vegetation re-growth. This situation is usually evident in areas where the original vegetation was removed as a result of timber harvesting among other activities.
- Soil and land degradation – trees through their root systems protect soils thus naturally preventing soil erosion and land degradation. Poor vegetation cover therefore renders the land vulnerable to denudation.
- Destruction of animal habitats - The life system of animals is dependent on the optimal functioning of the forest. Consequently, its destruction robs them of their habitat and may lead to migration or extinction of some animal species.
- Threat of extinction of specific indigenous tree species, (mukwa and muzauli).
- Change in weather patterns
- Pollution is also on the rise due to indiscriminate disposal of non- timber associated wastes in the areas where the trees are harvested.

3.1.5 Social Implications

Timber processing has had some positive impacts on the social fabric of the community. It fosters harmony between different social groups as they work together. This was found in Mayukwayukwa Refugee Camp where the locals were seen to be more closely intermingling with the refugees as a result of the timber processing activities. It was also found that local communities are mostly consulted at committee levels as they give 20% of the labor requirement and consent from them is required before implementation. In other instances, chiefs are brought on board.

In some places such as Kaoma, the women and children use barks/off- cuts of timber as fire wood in homes which saves them time which would otherwise have been used on collecting firewood in the bush. This therefore frees them with more time to spend on other household chores.

Notwithstanding the above, there are negative impacts of the activities as can be evidenced from the rampant destruction of roads due to heavy trucks ferrying logs. This could be seen from the damage on the road to the school within the Mayukwayukwa Refugee Camp in Kaoma District. The high illiteracy levels among local communities though not caused by the timber processing, hinders them from enjoying maximum benefits from the sector as they are ignorant of operational issues in the timber business. This sometimes leads to monopolies by foreign investors who owing to their more advanced technologies harvest quicker and therefore can take up more and more forest area. In terms of access to information, the employees of timber processing firms have no access to information on most of the issues affecting them and in some cases did not even know the prices of the furniture they were making.

3.1.6 Health and Safety Issues

Timber processing is a high risk occupation and therefore very high standards of occupational health and safety must be adhered to. These risks range from the use of machinery, working at heights and handling heavy materials to exposure to dust, noise and chemicals. At all these stages, potentially harmful events can happen at anytime. These events can affect a person's health, by causing them to suffer skin and respiratory diseases. Additionally, they can also cause injury such as a loss of fingers or even death. Apart from the people occupationally exposed to these risks, visitors, contractors, cleaners or anyone on a timber processing site can be at risk of injury or illness⁴⁷.

Conversely, given the above scenario, it was disappointing to find that at most industrial sites visited, workers were without Personal Protective Equipment and Clothing(PPE/C) thereby exposing themselves to risks as a result of accidents and/or health effects.

In addition to these risks arising from accidents, workers are also at risk of effects resulting from the prolonged exposure to wood dust. According to the Workers Health Center ⁴⁸, Health effects of wood dust include among others:

- **Skin irritation and skin sensitization:** Skin irritation can be caused by contact with the wood itself, dust, bark, sap or lichens growing on the bark. Symptoms subside once the irritant is removed. Sensitization dermatitis is usually caused by exposure to the fine dust from certain wood species. This exposure produces symptoms similar to skin irritation. Once sensitized, the body sets up an allergic reaction, and will react severely when exposed even to a small amount of wood dust.
- **Allergic and non-allergic respiratory effects:** The most commonly reported allergic respiratory effect due to wood dust exposure is asthma. It may occur alone or in conjunction with dermatitis. Occupational asthma and rhinitis due to exposure to wood dust has been well documented. Exposure to wood dust can cause chronic obstructive lung disease. Exposure to saw fumes containing terpenes, a constituent of wood also causes chronic obstructive impairment in lung function.
- **Nasal effects:** Chronic exposure to wood dust can cause impaired nasal mucociliary clearance. A major portion of airborne wood dust is contributed by particles larger than 10 µm size, which can be trapped effectively in the nasal passage. Nasal cancer is a significant hazard of woodworking and is particularly associated with hardwoods.
- **Biohazards:** Exposure to micro-organisms that grow on wood can also cause potential health effects. Endotoxins from bacteria and allergenic fungi growing on wood are the main biohazards found in wood processing workplaces. Exposure to these biohazards can cause adverse health effects such as organic dust toxic syndrome (ODTS), bronchitis, asthma, extrinsic allergic alveolitis (EAA), and mucous membrane irritation. The fungi predominantly associated with EAA and ODTS are dry spored species such as *Aspergillus* and *Penicillium*.

3.2 The Way Forward on Timbers Processing in Zambia

Given the above state of affairs as it relates to the human rights issues associated with timber processing in Zambia, there is urgent need to put in place mechanisms to ensure their sustainable utilization and optimal accessibility of the revenues from the exploitation of forestry resources in Zambia.

⁴⁷ Department of Labour, 2005. Guide to Health and Safety in the Timber Processing Industry.

⁴⁸ Workers Health and Safety Center Fact Sheet

There is need to actualize the vision of the ZFAP of 1998, the Joint Forestry Management Guidelines and the National Forestry Policy and aspirations of the 1997 Forestry Act.

The government as the principal player in the realization of Vision 2030 and other related legislation has to put in place the following mechanisms:

- Revise the license tenure period from the current five years to a longer period to allow for the gradual and sustainable harvesting of timber.
- To include as part of the license conditions a provision for reforestation on the part of the proprietors to compel them to regenerate the trees they are harvesting. Timber is a renewable resource and therefore the reforestation rate should equal or even exceed that at which the trees are being harvested.
- To implement the Joint Forestry Management Guidelines to ensure that local communities benefit from the exploitation of their resources. The non-tangible benefits of the trees must be emphasized in this regard to increase the appreciation of the locals for this resource and minimize its over-exploitation and mismanagement.
- The investment scenario also has to be revisited. A Strategic Environmental Assessment has to be undertaken on future timber processing ventures as they relate to the location and characteristics of the communities. This will avert situations where the local communities feel outrage towards investment as it has robbed them of their traditional income generating activities.
- The labor laws relating to timber processing must be strengthened to ensure that remuneration is not segregative and the workers have the highest level of protection against occupational accidents and illnesses.
- The law enforcers also have to ensure that offenders are penalized in accordance with the law and the immigration department is brought in to handle cases dealing with foreign investors.

The private sector in the timber processing sector has a paramount role to play in ensuring that the potential health hazards associated with working with timber and wood dust are controlled. They can do the following:

- ☐ Ensure that workers are made aware of the potential health effects of wood dust exposure.
- ☐ Provide good housekeeping to ensure that excessive amounts of dust do not accumulate inside equipment and in work areas, as this can cause fire or explosion hazards.
- ☐ Provide effective and adequate exhaust ventilation systems for all machinery and hand-held tools. In addition, dusty processes should be segregated. Although it is difficult to control dust completely, it is usually possible to control the levels to within safe occupational limits with a well designed, efficient and properly used exhaust ventilation system. Such a system must be regularly maintained.
- ☐ Provide suitable respiratory protective equipment for all workers.
- ☐ Defective old machinery (especially in sawmills) should not be operated.
- ☐ Dusty surfaces and machinery should be cleaned regularly using a dustless technique such as vacuum cleaning.
- ☐ Workers should be periodically trained regarding the use and maintenance of ventilation systems and also the use and maintenance of personal protective equipment.

In Zambia, over 90% of household energy is fuel wood¹. Most rural communities depend on forestry resources for both their subsistence and livelihoods. Thus for Zambia's forests and woodlands, rural and urban households are highly dependent on forest resources. This therefore necessitates community participation and involvement which are cardinal when private firms exploit the forests for private gain. It was found that in most instances, the timber harvested was imported and made into furniture which was later exported back to Zambia at very high cost. It was pleasing to find that one timber processing firm in Livingstone had built and maintained a clinic and school for the nearby community as part of their Corporate Social Responsibility (CSR).

In conclusion, forests are a renewable resource whose exploitation must be sustainable both in terms of environmental sustainability but more importantly the social fabric of society must be preserved. Human rights must be protected to ensure that health, safety and economic livelihoods of the people are upheld. This thus calls for concerted efforts from all stakeholders to ensure those future generations will benefit from this very important industry.

The World Bank policy and procedures stipulates, 'involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs and where it is not feasible to avoid resettlement; resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits'. It also states displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs. It emphasizes that, the displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, and whichever is higher'.

3.3.0 Agriculture Sector

Most of the Zambian citizens depend on agriculture for their livelihood. The agriculture sector in Zambia has the potential to enhance economic growth and reduce poverty. Good performance in the sector translates into overall improvement of the country's GDP, creates jobs, and expands the tax base. Thus the failure of agriculture to provide for secure livelihoods is considered as a major factor contributing to rural poverty. In addition, rural areas suffer from deficiencies in access to basic amenities such as health services, safe water, quality education, and infrastructure that worsen the poverty situation.

The Government being the custodian of strategic policy reforms has the responsibility to ensure that agriculture policies are sustainable. The government does this through the Ministry responsible for agriculture in collaboration with other Ministries such as Ministry of Finance and National Planning and the MTENR. Agricultural policies however have to conform to the government's commitment to conserve and protect the environment which in turn will protect the human rights of people. This duty derives from article 24 of the African charter of 1981 which guarantee "all persons the right to satisfactory environment favorable to human rights'.

Agricultural management in Zambia is spread across various institutions with the main one being the Ministry of Agriculture and Cooperatives (MACO). In addition, farmers groups such as the Zambia National Farmers Union and Small Scale Cooperatives also have a role to play at local level. At the national level, the develops strategic policies that will sustain the agriculture sector. Sustainability in this instance implies policies that will not have a negative impact on the environment.

3.3.1 Agricultural Practices and Human Rights

Whilst agriculture is a necessity in the provision of food security and provides employment for many local populations, a number of effects arise as a result of unsustainable practices. Consultations with various stakeholders in Eastern Province yielded the following findings.

Most of them are smallholder farmers growing crops for sell to bigger corporate entities such as Cargil or Dunavant Zambia Ltd (formerly Lintco). In Eastern Province as can be assumed in other parts of the country, the big multinational companies supply farming inputs to the small-scale farmers including seed, chemicals and their application equipment and in some cases protective equipment. The government has through its fertilizer support program also been subsidizing the prices of farming inputs such as seed and fertilizer to mostly rural farming communities.

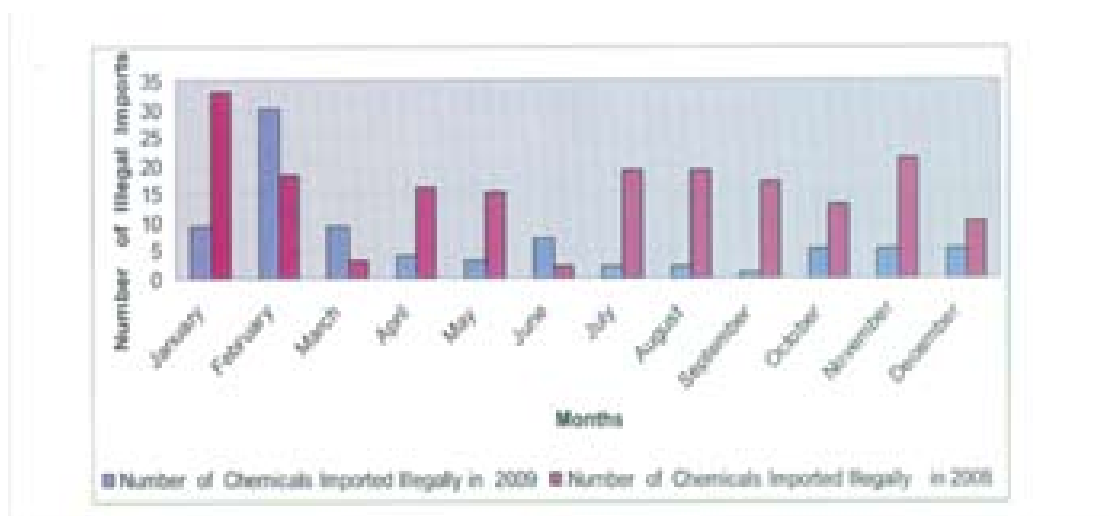


Figure 1: illegal chemical imports through chirundu border post

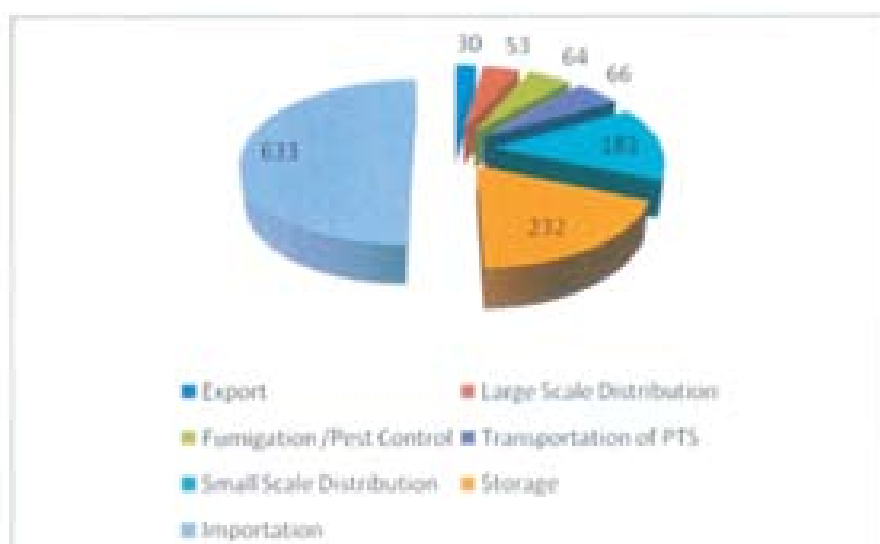


Figure 2: distribution of chemical licenses issued by the ECZ. ¹¹

3.3.2 Economic Implications

The government and its cooperating partners have through the promotion of agriculture as a viable economic sector meant to reduce the country's dependence on copper as a mainstay of the economy. They have also provided an environment for citizens to realize their potential as human beings. Further, they also have to an extent provided the people with sustainable livelihoods which are translating into tangible benefits to the communities.

“ This season I planted about two hectares of sweet potatoes.....and managed to harvest 200 by 50 kg bags of sweet potatoes.....I sold the sweet potatoes and raised K5,200, 000...this was my first time to have such a huge amount of money in my life.”

Source: Loveness Siadunka in World Vision Zambia Journal, 2009.

3.3.3 Environmental Implications

Agriculture by its very nature does have negative impacts on the environment as it depletes the soil of nutrients. The lack of crop diversification in localized farming has resulted in the land losing its natural fertility. There is also pollution of both the soil and consequently underground and surface water as a result of the application of chemicals to kill pests and fertilize the soil. Further, increasing expanses of land are being cleared for agriculture entailing the clearing of vast tracts of forest cover. This leads to the soil losing its integrity and increasing soil erosion and sedimentation of nearby surface water bodies.

The locals spoken to also indicated that soil erosion was very serious on the slopes as most farmers grew their crops there. The contamination of the surface water also leads to loss of biodiversity as some fish species die due to exposure to chemicals and fertilizer. Since this water is used in some places of cooking and other personal uses, it is therefore safe to conclude that these chemicals also directly affect the general non-farming community.

3.3.4 Social Implications

Whilst there is an improvement in the economic status of most communities with increased farming outputs, this is with some negative social consequences. A focus group discussion conducted in Lundazi District revealed that there were cases of displacement of people as a result of farming activities. Additionally, marriages were under increased pressure arising from the improved incomes; this was evidenced by the rise in wife battery, divorces and increases in the HIV/AIDS infection rates. While this did not have supporting evidence, the communities consulted strongly felt that the improved earnings from farming were causing some disruption in the social fabric of the society.

Another important issue that came to the fore in both Focus Group Discussions (FGDs) as well as one on one consultation with a traditional leader was the engagement of children in farming activities as additional family labour. This while being an infringement on the children's right to protection from exploitation also exposes them to highly hazardous chemicals whose effects in some cases will affect them even in their later lives. In addition, it also deprives them of their right to education as they absent themselves from school in obedience to their parents who utilize them as 'cheap' labor on their farms.

3.3.5 Health and Safety

According to the Zambian constitution, every citizen has the right to life. However, this is being violated for the majority of farm workers who are exposed to various extremely hazardous chemicals in most cases without the protection of equipment or clothing. In Eastern Province, some of the chemicals used in cotton farming such as Monochrotophos have been banned in developed countries around the world owing to their very harmful human health effects.

Whilst the companies claimed that their workers were supplied with Personal Protective Equipment and Clothing (PPE/C), it was apparent that it was not being utilized as intended as several instances were recorded where farmers were applying pesticides in the field without PPE. Even more alarming was the fact that a good number of these were women sometimes with children on the back. The farmers asserted that they had little knowledge on the effects of these chemicals.



An entire family exposed to chemicals whilst spraying in a field

3.4 The way Forward for the Agriculture Sector in Zambia

In response to the various challenges resulting from agricultural practices, the government has with the help of partners introduced a number of programs aimed at reducing the negative impacts of agriculture.

The Zambian government initiated the Soil Conservation and Farming systems Program (SCFP 1985-2010).³⁹ This program is aimed at providing the involvement of local communities in the development of management plans to manage natural resources including agriculture land. One of the objectives of this program was to facilitate for the meaningful participation of the local communities in the conservation of the environment through positive agriculture practices. This is also complemented by efforts from the private companies working with government extension officers to engage the farmers at the start of each farming season in meetings on conservation farming. Through field days, they also share experiences on safety and showcase the benefits farmers derive from adhering to proper farming methods.



Field day in Lundazi district

The Ministry of Labor and Social Security conducts regular inspections on the farms to ensure that health and safety standards are adhered to and that children are not employed as labourers.

Civil society also encourages the participation of vulnerable groups such as female farmers and the disabled in farming. They also train peer educators to speak to farmers on the issues of HIV/AIDS. Women groups are especially encouraged to participate in agricultural programs and awards given to best performing women. The companies also sell inputs at half price to the women.

However, there is need for the government through its agriculture monitoring programs to ensure that multi national and international companies that have invested in agriculture adhere to the laws of the country. It is thus imperative that the enforcement capacity of regulators such as the ECZ and MLSS is improved so that inspections are conducted on a regular basis to ensure that persons that are working in the farms are provided with safety and protective equipment and more importantly that it is correctly used during the application of the pesticides.

The FSP while being a vehicle for increased agricultural productivity also results in the loss of soil nutrition and therefore government being the major distributor of fertile should increase the efforts promoting the use of natural soil fertilizers in the form of agro-forestry. It has been proved in that the use of leguminous plants such as Tephrosia, Grilicidia and Sesbania Sesban improve soil fertility and counter the negative impacts of soil erosion.

Agriculture is an effective vehicle for the government to provide its citizens with an environment that makes it possible for them to realize their aspirations. As stated in the 2009 State of Human Rights Report “Human Rights are instruments by which a government protects its vulnerable population from poverty, hunger, illiteracy, disease and other vices that threaten the individual’s enjoyment of their rights”. This is particularly true for the agriculture sector.

3.5 Mining Sector

Mining activities have since the 1930's been taking place in Zambia.⁴⁰ It has thus contributed to the developments that Zambia has seen in the past and present generation. It has provided job opportunities for the people as well as infrastructure development of the large cities.⁴¹ However, due to the type of mining practices, people's livelihoods and the environment are also affected.

Despite the negative effects that mining may have on humans and the environment, mining is a sector in Zambia that contributes more than 70% to the GDP⁴² and therefore still the mainstay of the Zambian economy. This is as a result of the rich mineral resources that the country is endowed with particularly copper. The Copperbelt as the name stipulates is the hub of copper which is the major mineral that Zambia mines. With regards to mining, copper production increased by 8 per cent in 2006, this was attributed to the buoyant world demand reflected in record high prices. Nevertheless, production, at about 492 000 tonnes was 4 per cent down from the original forecast as a result of operational problems experienced at the Konkola Copper Mine (KCM), the largest copper producer, and at the Mopani Copper Mines (MCM), the second largest.⁴³

The opening of the new mines in the form of Lumwana and Kansanshi mines in the North Western Province as well as the launch of the MCM smelter expansion project which is Africa's largest with a total capacity of 850 000 tonnes of copper concentrate per year has further increased the country's mining potential. Another smelter worth \$200 million with a capacity of 150 000 tonnes per year by China non ferrous metals group in 2008 has been developed.⁴⁴

This boom in the mining sector coupled with donor funded work on road developments has meant an increase in the investment in cement manufacturing and consequently, there was a huge demand of as much as 900 000 tonnes translating into more than \$170 million worth of investment.⁴⁵

Historically, Zambia was managing its own mines through the Zambia Consolidated Copper Mines (ZCCM) but after the low mineral prices worldwide in the mid 90's and other factors related to management concerns, the mines got privatized and as such moved to private hands and the minimal shares that Zambia still retained are currently held under the ZCCM- Investment holdings(ZCCM-IH).

The Mines and Minerals Act of 1995 regulates mining activities, operations and provides for regulations for environmental protection during prospecting and mining activities and rehabilitation of the areas mined. This Act is complemented by the EPPCA of 1990 and together, these two Acts are in place to codify Zambia's international law commitment to ensuring the protection of the environment and human rights. Mining by virtue of its nature, has got the potential of a lot of environmental violations which in turn will affect the human rights of persons. It is for this reason that the government of the republic of Zambia has put in stringent measures as to the requirements one has to comply with prior to the issuing of mining operational licenses.

3.5.1 Human Rights Issues in the Mining Sector

Mining as an economic sector has contributed significantly in equipping the people with a source of livelihood and through foreign exchange earnings the benefits have been translated into government services to a larger populace. However, it has also come with immense human rights abuses as they relate to people's rights to life, a clean environment and working in safe and healthy conditions.

Discussions with various sectors of the public in the North Western, Copperbelt and Central Provinces showed that in addition to the more traditional environmental impacts, there is increasingly the more pressing issue of social impacts of mining.

3.5.2 Environmental Implications

Deforestation, unfilled mine pits and trenches and uncontrolled disposal of mine waters are the main causes of land degradation in mining activities.⁴⁶

Zambia is rich in minerals such as copper, cobalt, and zinc with mining activities operating on a large scale. A large portion of land is thus required for the mines to be operational which in turn results in large scale land clearance leading to massive deforestation. This consequently leads to environmental damage. The open pit mining leaves a lot of pits coupled with a lot of disposal of mine waters. It has been established that mine waters leave the land inerrable. This was evident in Kitwe's Amcor area where the land could not yield any crops due to the mine waters that used to be damped in the area.

Air pollution characterized by emissions of harmful gases including Sulphur Dioxides, Nitrous Oxides, Particulate Matter and in some cases Volatile Organic Pollutants is a normal feature in mining activities. Areas such as Kankoyo in Mufulira have paint peeling off houses and very poor soil fertility as a result of acid rain.⁴⁷

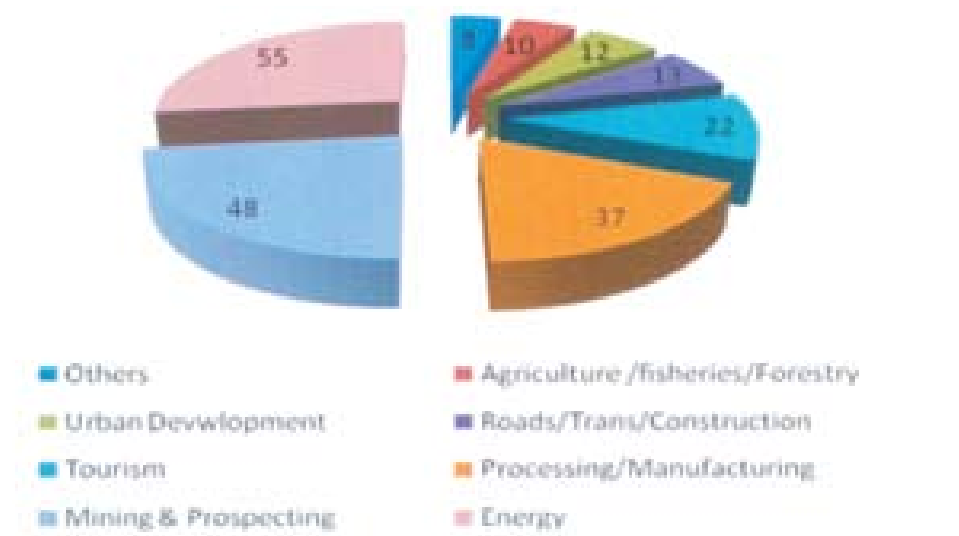


Figure 3: Mining projects accounting for almost half of Projects considered under EIA.

Water Pollution is also another very negative impact of mining activities with major elements including Cadmium, Magnesium, Sodium, Potassium, Sulphur and Silica. The Kafue River generally has more elevated levels of pollutants compared to other rivers draining the African continent.

The government has a duty to provide its citizens a clean environment with safe drinking water, but with all the pollution arising from the mines, it is very challenging to meet these obligations.

The hazardous waste that emanates from mining operations is perhaps the most challenging environmental impact of mining. Long after the mines have closed, liabilities such as the ones currently being seen on the Copperbelt in form of tailings dams, waste and overburden rocks have to be managed. The resulting environmental impacts are various and more often than not, the government has to take responsibility for their management.



Warning of Uranium tailings dump in Kitwe

3.6 Health and Safety Implications

Mining activities are a cause of health hazards within and around the mining areas. This is as a result of occupational and environmental exposure to harmful pollutants discharged from the mines which find their way into the air, water and soil that people use.

As has been shown previously, some of those substances such as lead and mercury are heavy metals that have been shown to lead to chronic human health effects including cancers, reproductive failure, neurodevelopmental effects and endocrine disruption.

Though there is a paucity of research support to establish a causal effect relationship in a Zambian setting, it is safe to assume that the effects evidenced in other countries can be replicated to Zambia and even show worse outcomes given the poverty levels and prevalence of other immune compromising diseases such as HIV and AIDs. Additionally, studies conducted on various population groups in Kabwe show elevated levels of blood lead compared to recommended levels as a result of exposure arising from many decades of lead mining.

Article 24 of the African Charter provides that 'all persons have the right to a general satisfactory environment favorable to development'. It is thus a gross violation of the charter if the state parties do not put stringent measures in place to address the right to environmentally friendly surroundings. Pollution is a danger to one's health. It is for this reason that the right to health ties with the right to life. It can thus be concluded that the non compliance to the mining environmental laws leads to a violation to a right to health and subsequently to the right to life.

3.7 Social Implications

The investments into new mining areas have led to massive displacement of people who have since been resettled but are nevertheless experiencing unplanned negative costs to the displacements. An FGD conducted with the ARMCO Community of Kitwe and interviews with regulators such as ECZ, ZCCM-IH revealed very interesting findings.

Zambia has no resettlement policy although it uses the World Banks' guidelines on resettlement of people that are displaced because of a developmental project in the area. These developmental activities entail moving people from their original places where they lived more than 30 years to new found areas.

- During re-locations some of the communities are informed well in advance by the relevant authorities or traditional leaders while others are informed overnight giving them less time to prepare physically and emotionally.
- Additionally, in many situations, the investors involve the public in projects through processes such as public hearing just to highlight the economic benefits and promises of social benefit which in most instances they do not fulfil.
- They do not emphasise issues of social, cultural and disruption of the way of life of the local community.
- The investors focus on job creation, improvement of the standard of living by creating market to the local communities especially those in agricultural activities and few words on compensation on those who are directly affected by the project.
- They do not consider those who are indirectly affected.

It was also discovered that the compensation to the affected parties especially those who are affected directly by the project do not reflect the lifestyle of the local communities and adhere to the World Bank Guidelines. It's common to find a person involved in farming activities as a way of livelihood being compensated by building them modern house in town after displacement. However, these houses come with a lot of unforeseen costs and responsibility such as electricity bills, waters bills and ground rates to be borne by the occupants who in most cases have lost their source of livelihood. Subsequently, these people are overwhelmed with these bills and resort to renting out the houses and moving back to the hazardous area or similar marginalised area.

Local communities narrated that there is a lack of transparency in the way the compensation is calculated especially as it relates to the affected people where the project is to be implemented. The owner does not disclose the amount of compensation to the affected people. This is done at their own discretion according to what they feel is fit for the displaced people. However, due to this unreasonable and unjust practice, some of the displaced people have ended up in a deplorable condition of life style which deprives them of education, health, markets

The World Bank policy and procedures stipulates, 'involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs and where it is not feasible to avoid resettlement; resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits'. It also states displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs. It emphasizes that, the displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, and whichever is higher'.

as they are moved far away from such and other related social amenities. The full impacts of displacing people are not taken into consideration in the calculation of the compensation package. There is usually an underestimation of the duration in which compensation will be completed resulting in the people exposed to very hazardous scenarios since the projects would have already commenced. Instead of transforming the livelihood of the people for the better, these projects have left the affected people destitute.



Houses Built by ZCCM-IH in Kitwe's Mindolo Township

Other social issues include labor and occupational hazards such as rampant casualisation of the un-skilled workforce. It was found that employees are given three month contracts which have to be continuously renewed thereby depriving them of all the associated benefits of long term employment such as pensions, medical insurance and so on. In addition, the miners are often exposed to dust and other particulates during their working hours leading to high cases of Silicosis, Pneumoconiosis and other such related respiratory tract infections. The Occupational Health and Safety Board under the Ministry of Health has the duty to conduct regular medical surveillance on the miners and it has been found that most end up with Chronic Respiratory Diseases.

Further, the migration that takes place when new mining areas such as the ones in North Western province are opened up sees an influx of “foreigners” coming into the local areas. This leads to social disruption of the traditional setting of the area and in some cases there is an associated increase in social ills such as prostitution and crime.

Families in one of the new mining areas alleged that they are enclosed and their extended families require a “visitation permit” which should stipulate how long one is going to visit a particular employee. This is a gross violation of the freedom of movement as provided for in part III of the Zambian constitution.

3.8 The Way Forward on Mining and Human Rights in Zambia

To address these and other negative effects that mining has on the environment and general human population, the government has in collaboration with various stakeholders put in place measures to prevent or control these negative effects.

The Ministry of Mines and Minerals Development through the Mine Safety Department has

intensified the enforcement of regulations and improved coordination with relevant stakeholders such as the ECZ. They conduct joint inspections and ensure compliance from the mining industry through strict penalties and in some cases outright closure of the mines in question.

Civil Society Organizations are also doing their part in advocating for the rights of the public during the EIA processes and increasing awareness and information campaigns to ensure that the dangers of mining waste and other related issues are readily communicated to the affected people.

While every effort is being made to ensure that human rights violations in the mining sector are minimized, the issue of compensation still requires more review. Clearly, the intention of the compensation may be noble but in the long run, the social and cultural impacts by far outweigh the costs. The benefits offered by resettlement programs should be clearly established. This may cover, for urban resettlement activities: financial compensation; housing and service provision; transport, temporary accommodation and other short-term provisions required for relocation such as, credit facilities, training or job opportunities. In rural areas however, this may cover land-for-land, participation in training and access to material equipment, farming inputs and credit. In cases, where land is not the preferred option for some of the displaced persons, non land-based options should be considered. These options should be built around creating employment opportunity or self-employment. Moreover, resettlement offers a unique opportunity for addressing gender inequality in land ownership and control. For example, project owners should make sure that project planners are ensuring that replacement land is registered in the name of women and men, when applicable case for instance of absence of formal legal rights to land or other assets and in conformity with the borrower's own laws and legislation, either by establishing independent ownership rights for women or jointly under both the husband and the wife's name.


The MLSS also needs to strengthen its enforcement capacity particularly as it relates to the occupational health and safety of the mine workers. PPE and other protective devices should be readily available and utilized by the workforce and medical checks should be made mandatory at all the mines. Issues of exposure to radiation as a result of Uranium mining should also be looked into. More research must also be conducted to ascertain the causal relationship between exposure to pollutants and mining waste and chronic conditions that manifest in the latter years of the miner's lives.

The issue of revenue sharing must also be looked into as most people spoken to expressed their disappointment to the at generally not seeing the benefits of having minerals in the country if they were only to be enjoyed by a few while the costs as they relate to environmental, health and social impacts are externalized and borne by the general population.

3.9 Conclusion

Development in Zambia is natural resource based. In achieving its goal to becoming a middle income country by 2030, the government has diversified the economy to other sectors to reduce the dependence on Copper Mining as a driver to increased economic performance. A cursory analysis using three sectors namely Timber Processing, Agriculture and Mining shows that whilst economic emancipation of the people is being realized to some degree, there are a lot of external costs that are apparent.

There is therefore need for the government and its partners to look into the areas highlighted to ensure that an enabling environment is created for people to realize their visions and aspirations alongside with the protection of all associated rights in terms of health, life and general livelihood.



The right to a healthy environment has to be upheld in all developmental activities and this calls for a drastic reduction in the amount of pollution currently been seen particularly with mining operations. Environmental destruction which is also very prevalent particularly with timber processing and agriculture should also be reduced as more often than not, the vulnerable in society who depend primarily on natural resources for their livelihoods are the greatest victims of this scourge.

Lastly, procedural issues such as the right to information and freedom of expression have to be advocated in the development and utilization of environmental resources. In Zambia, the EIA serves as a tool for the participation of the general public in decision making regarding the citing and design of developmental projects.



CHAPTER FOUR

REALISING THE RIGHT TO INFORMATION AND PARTICIPATION – THE ENVIRONMENTAL IMPACT ASSESSMENT PROCESS

4.0 Introduction

The Environmental Impact Assessment (EIA) process is a vehicle that has been used for the realization of the rights to information and participation. The Zambian Constitution aims to create an environment where people should have the “...freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference,..”. Access to information and participation is covered under the NEAP of 1994 and the EIA Regulations (No 28 of 1997), which states in section III, No. 8 (2): “...the developer shall organize a public consultation process, involving Government agencies, local authorities, non-governmental and community based organizations and interested and affected parties...”.

The right to information and participation are both rights in themselves and also essential to the exercise of other rights, such as the right to life, the right to the highest attainable standard to health and the right to adequate food, among others. Lack of information denies people the opportunity to develop their potential to the fullest and realize the full range of their human rights. The EIA process should consider the right to information and participation highly relevant in the context of the enjoyment of basic human rights. Public access to information when requested and the obligation of public authorities to disclose and inform, irrespective of requests, are imperative for the prevention of environmental human rights problems and the protection of the environment⁴⁹. The present EIA process and the importance of the right to information and participation in relation to this mandate is the focus of this chapter.

International human rights bodies have placed both human rights and the environment on the agenda but have not moved much further than affirming the inextricable relationship between human rights and the environment; and recognizing the need to identify new trends in international law relating to the human rights dimensions of environmental protection.

The procedural rights aspects have been clarified through jurisprudence. Some international, regional and national cases show that environmental rights are being litigated through the recognition of standing, access to information and due to process of law. Indeed injunction type has been used in quite a few countries and in some obligation of public authorities has been extended even further to environmental impact assessments of potentially hazardous activities. This report in previous chapters has however shown that while progress has been made in increasing access to justice in environmental matters locally, there is still a lot that remains to be done.

Article 19 of the UNDHR stipulates that “everyone shall have the right to hold opinions without interference”. This means that everyone shall have the right to freedom of expression which shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. Access to information is alongside environmental rights. International human rights law is relatively underdeveloped in this area but regional developments, notably the 1990 European Community Directive on the freedom of access to information⁵⁰, may foster international standard setting in this area.

Further, the 1992 Rio conference on Sustainable Development stressed the need to ensure access to information in order to enable participation in decision making. Accordingly, Principle

⁴⁹ United Nations, Human Rights Council ; promotion, protection of all human rights, civil, social, political

⁵⁰ Human Rights and the Environment, Second progress report prepared by Mrs. Fatma Zohra Ksentini , special rapporteur, UN.doc26th July, 1993

10 of the Rio Declaration stipulates that “environmental issues are best handled with the participation of all concerned citizens at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities and opportunity to participate in decision making processes. The state should facilitate and encourage public awareness and participation by making information widely available”⁵¹. The conference for that reason, asserted the duty of public authorities to prevent environmental degradation, through means including the EIA for proposed activities that are a likely to have a significant adverse impact on the environment⁵²

4.1 Public Participation in the EIA Process

Public participation is a process leading to a joint effort by stakeholders, technical specialists, the authorities and the proponent who work together to produce better decisions than if they had acted independently. The public participation plan forms part of the Terms of Reference (ToRs) for proposed developmental project's that require EIA. Public environmental awareness and participation in the regulatory enforcement mechanism is key to its' successful application and enforcement. Society has the power to compel industry to consider environmental protection in their operations.

In view of article 27 of the UDHR which states that everyone has the right freely to participate in anything pertaining to developmental project in the area, the local communities where the developmental projects are located, have the right to participate and enjoy the benefits that are created from the projects that are implemented in their locality.⁵³ All interventions should therefore be grounded in the realization that human rights and the capacities of the state to deliver must go hand in hand.

Development projects must translate into tangible benefits for the poor. If people participate in the consultation, but experience no real improvement in their daily lives as a result of the activities that are taking place in the local area where they live, they may become disillusioned with the industrial developmental projects. This may result in public outrage. If governments are strengthened, but are not accountable to the people, then the process may become essentially undemocratic – benefiting few and not the majority. Without vigorous inclusive participation, official accountability, accessibility of information flow and strengthened responsive institutional capacity, governments are unlikely to deliver on their commitments of improving the lives of the people who they represent⁵⁴

This requires multi-stakeholder involvement to ensure continued support to affected local communities through increased capacity building activities to enable them participate effectively in articulation of their contribution to decision making through more pro-active strategies, in addition to the convention methods provided for in the laws such as radio and newspapers when disseminating information of EIAs process. The strategy should aim to empower local communities through training, attachments, provision of resources and tools. In addition, information relating to hazards and risks arising directly or indirectly from environmental degradation should be provided to the communities so that they are not left out of the development projects. Such information should include effects of air pollution, water pollution and exposure to heavy metals such as lead poisoning, uranium and so on and how communities can participate in remediation measures. A network of educators and communicators should also be supported to promote a wider dissemination of information throughout the country. This will ensure that all stakeholders participate meaningfully in all projects which are taking place in their locality.

51 Rio Declaration on Environment and Development, principle 10, Report of the United Nations Conference on the Environment and Development. UN.doc 3-14 June 1992, vol. 1

52 Economic, social and cultural rights , asbjorn eide, catarina Krause and allan rosas 1995

53 WWW.UN.ICCPR

54 UNITED NATION DEVELOPMENT PROGRAMMES 2008

4.2 What is an EIA?

An EIA is a thorough investigation of conditions within the environment of a proposed development or project followed by an assessment of the impacts that the development of the project will have on the environment in its totality i.e. physical, biological and social-economic aspects. The purpose of conducting an EIA in this regard is to enhance quality by ascertaining the environmental acceptability of the development or project long before it is implemented. This process is applied prior to major decisions and commitments being made to the project. Besides a broad definition of environment is adopted, whenever appropriate social, cultural and health effects are considered as an integral part of EIA process. Particular attention is given in EIA practice to preventing, mitigating and offsetting the significant adverse effects of proposed undertakings. EIA is probably the best known environmental mainstreaming tool and is often the only one backed by its own legislation and statutory institutions dedicated to coordinating application.⁵⁵

The purpose of EIA is to provide information for decision-making on the environmental consequences of proposed actions and promote environmentally sound and sustainable development through the identification of appropriate enhancement and mitigation measures. EIA strives to answer the following basic questions:

- What will happen if the project is implemented?
- How much changes are going to occur?
- Do the changes matter?
- What should be done about the changes?
- How can the decision makers be informed about the effects?

In order to ensure the EIA is implemented smoothly and in a satisfactory manner. It must be open and involve all 'Interested and Affected Parties' (IAPs), such as local communities, government authorities, developers, investors, CSO and FBOs to name some. EIAs should focus on major positive and negative impacts of the project to facilitate decision making based on a range of alternative courses of action. They must create effective coordination and communication avenues amongst planners, project proponents, government and private sector, NGOs, communities, traditional leaders, general public and others. It should include in built environmental monitoring and auditing to ensure adherence to selected options a performance standard.

4.3 Historical Background of Environmental Impact Assessment

EIA has been a proven tool over the past years and has a good track record in evaluating the environmental risks and opportunities of project proposals and improving the quality of outcomes. Yet the need for a similar assessment process at the strategic level of decision-making has been recognized. Leaving environmental assessment until the project stage severely limits the opportunities to identify the strategic choices that might lead to more sustainable outcomes and reduce risks to the environmental resource base that provides the foundations for growth and development. While EIA has been successful in integrating environmental considerations in development projects, EIA practices still pose a challenge for many developing countries.

Project assessment invariably takes place in a predetermined policy environment. For example, an EIA of a new fossil fuel energy generation plant will be unlikely to consider other energy generating possibilities. Project EIAs are usually prepared by the project proponent with a vested interest in project approval. So, alternatives for energy generation will be limited to location and technology choices within the framework of fossil fuel generation. A strategic decision will

already have been made to develop fossil fuel energy resources as the preferred option, and this will likely have been taken without rigorous attention to environmental considerations.

The development of an environmental impact assessment (EIA) process dates back to the 1960s when concerns about land the effects of land use activities on people and environment fostered development of a number of new decision aids in the United States of America(USA). The implementation of this process allowed for the adoption of similar EIA legislation in other countries with Canada and other European countries taking the lead in following the example set by the USA. By the end of the 1970s many countries had created legislation, policies, and institutions to coordinate EIA programmes. Over time the process has spread across the globe with most developed and developing countries adopting EIA as an important tool for caring the environment.⁵⁶

4.4 Legislative Framework of EIA Process in Zambia

The provision for EIA is made through legislation, administrative order or policy directive. Statutory Instrument No # 28 of 1997- EIA regulations, provides procedures for EIA, identifies minimum thresholds for EIA⁵⁷. The 1994 NEAP also provided the momentum since one of its fundamental principles states that it is obligatory to conduct EIAs of major development projects in all sectors.⁵⁸

Accordingly, an EIA is conducted and prepared if the project is likely to significantly negatively affect the environment. The period within which the ECZ is required to make a decision on a proposed project requiring an EIS is within 65 working days of receiving the EIS from the developer.

Environmental Project Brief (EPB) is an EIA prepared in respect of projects with very low negative impacts on the environment. Under the EIA regulations, the law states that a developer shall not implement a project for which a project brief is required, unless a project brief has been concluded in accordance with the said regulations and the ECZ has issued a decision letter. The decision can be one of these three options: an approval with conditions, deferment pending further information or a rejection with valid reasons. This decision can be appealed at two levels by the developer; either to the Minister of Environment or to the Courts of Law.

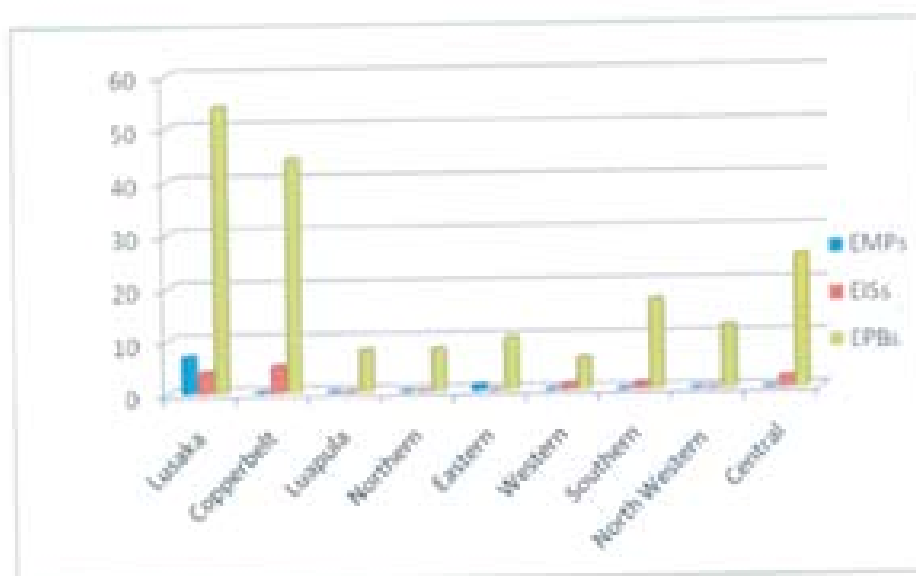


Figure 4: Provincial Distribution of Environmental Assessments.
Source: ECZ 2008 Annual Report

⁵⁶ Environmental council of zambia, environmental impact assessment

⁵⁷ Ecz 2007: Strategic And Bussiness Plan 2007-2011

⁵⁸ Grz,1994; The National Action Plan, Ministry Of Environment And Natural Resources

AN EVALUATION OF THE ZAMBIAN EIA PROCESS USING INTERNATIONAL GUIDING PRINCIPLES OF EIA GOOD PRACTICE⁶⁷

PRINCIPLES	ASSESSMENTS OF EIAs IN ZAMBIA (COMMENTS)
Purposive: EIA should meet its aims of informing decision making and ensuring an appropriate level of environmental protection and human health.	The EIA process in Zambia has met the target in that the information disseminated is intended for policy makers. The documents are circulated to relevant government institutions and through the PAC, consultation is addressed. However, local decision makers are not adequately covered in the local scenario. While the EIS'/EPBs have very good proposals on mitigation measures, these are not strictly enforced and are often not achievable. Further, human health protection is not mainstreamed in the current process and therefore calls for the active follow up by the Ministry of Health.
Focused: EIA should concentrate on significant environmental effects, taking into account the issues that matter.	This objective has been met as the developer is obligated to have a scoping meeting at which significant issues are agreed upon in consultation with relevant stakeholders. However, there is need for verification by the ECZ to ensure that those issues are indeed a true reflection of what the negative outcomes of the project would be.
Adaptive: EIA should be adjusted to the realities, issues and circumstances of the proposals under review	While it is widely understood that the ToRs developed at the beginning of any EIA process are not cast in concrete and therefore can be amended, the procedure attached to this is often cumbersome and therefore negates this provision. However, the public can at any time raise concern and if the ECZ deems the issues to be significant, they can direct the developer to include these in their ToRs and this has both cost and time implications in terms of the issuing of a decision letter.
Participative: EIA should provide appropriate opportunities to inform and involve the interested and affected publics, and their inputs and concerns should be addressed explicitly	<p>The current EIA process has attempted to provide opportunities for informing the public such as the holding of Public Hearing Meetings in the locality in which the project will be implemented, the use of community radio stations and instructions to the developers to summarize the projects in as far as practicable the language commonly used in that locality.</p> <p>However, there is still room for improvement in the information flow particularly at local level. There is inadequate sensitization to the IAPs prior to the period of the public hearing meetings. The EIS' are often bulky and accessibility to them is very limited to the common man. This calls for more involvement of other stakeholders at local level such as area councilors, Members of Parliament, government ministries, traditional leaders, NGOs and FBOs to translate this information into easily understood language for the local populace. Often, the Chief is taken to represent all the subjects' views even when he didn't have meeting with his people in the chiefdom to consult them on the views of the projects. Therefore, there should be need to consult extensively the local people who are more affected on the ground if the EIA process is to be meaningful and ensure that the inputs and concerns of all IAPs are taken on board at the decision making stage.</p>
Transparent: EIA should be a clear, easily understood and open process, with early notification procedure, access to documentation, and a public record of decisions taken and reasons for them.	<p>The ECZ has attempted to promote public education on the EIA process to various sectors of society to ensure transparency. However, at the local level, the process is a preserve of the few privileged traditional leaders who may have attended the training workshops or read the brochures.</p> <p>When it comes to particular projects, the locals are often left out of the planning cycle and therefore their views may not be taken early on in the process before the ToRs are developed.</p> <p>In terms of early notification, whilst the ECZ announces on public media both electronic and print of its intentions to hold public hearings, notification in the affected area is usually done a few days before the actual meeting. This reduces the time the public would have taken to consult internally and organize themselves to properly articulate their interests and concerns.</p> <p>Lastly, with regards to access to documentation and public records of decisions and reasons for taking them, this is perhaps the weakest area in the current EIA process in Zambia. There is hardly access to the documents because the information posted on the internet or press statements are released. This begs an answer to the question of how many Zambians have access to the internet or can afford a copy of the daily newspapers. and not everyone has access to the internet. Even though the EIS' are placed at the ECZ offices and local authorities, again, how many local people would have the time to sit and go through these often very bulky and technical reports to ensure their understanding and therefore participation will be meaningful?</p>

Rigorous: EIA should apply the “best practicable” methodologies to address the impacts and issues being investigated	To the contrary, the methodology used is not best practice of the impact because these investors are motivated by the profits generated from the project. They do not care to use the best practice since some of the project owners when they look at the cost of handling the impacts of the project they seems to be more expensive than paying a fine for defaulting the rules and regulations. They prefer paying a penalty to improving the methodology.
Practical: EIA should identify measures for impact mitigation that work and can be implemented	Some of the impact mitigation measures are not sustainable like the used of water to lessen the effects of pollution of dust in the mine.
Credible : EIA should be carried out with professionalism, rigor, fairness, objectivity, impartiality and balance	The ECZ must be commended for the high professionalism demonstrated in their conduct of the EIAs in Zambia. It also clear that there have been attempts to also conduct them with rigor, fairness, objectivity, impartiality and balance. It is on record that some projects with very deleterious effects on the environment have been rejected by the Council though in some cases, these decisions were overruled by the presiding Ministers of Environment. Include concrete cases of rejections.
Efficient	There is no efficient in our projects because we are still use old techniques of doing our business which is not efficient. Zambia is still very behind in terms of technology advancement as such we can not talk about efficient if we are still struggling to improve our technology.

⁶⁷ Adapted from Sadler, 1996; IAIA and IEMA, 1999.

The EIA Regulations state that the developer must provide an Environmental Management and Monitoring Plan (EMP) which is a document where all the measures that are required for environmental protection including mitigation measures and the monitoring plan, will be found for ease of reference. The aim of an EMP is to avoid, minimize or ameliorate effects or impacts resulting from project implementation and where possible, enhance beneficial effects.

4.5 Stakeholder Perspectives of the EIA Process in Zambia

4.5.1 Local Communities

The people say that these documents voluminous and they fail to understand the reports. They added by saying that the developers review the EIA process to the local community at the public hearing which they summarize the big document in few words making it more difficult to know the environmental and human rights issues. However, there is no concrete check to see if the language of presentation in the reports to be really simplified as the meeting is done by the investor and their chosen consultant. This has hampered the local community to make meaningful contributions with regards to the effects they are likely to face due to the developmental project. Most of the people who know much about the projects are interested in the present and immediate positive effects without considering the effect of the future. They requested that the ECZ should first educate the masses especially the rural people who have little understanding of the EIA because they usually look at it in monetary terms and creation of employment.

The document which is produced by the consultants is not readily available to the people and therefore very few people have access to it. The information flow is so bad that local people are left out of the consultation process and developers rarely care whether or not these groups are

availed with the information concerning the EIA documents or not. They continued to say that once few people have agreed with the document and since the ECZ has inadequate capacity for wide stakeholder consultation, they will give the developer a decision letter to go ahead with the project. The developers promise a lot of social responsibility when setting up those projects but immediately they “swing into action” of actual production and they start receiving proceeds, they forget about the people around the area. This is because the ECZ rarely do the monitoring and inspection of these projects to find out about the effects emanating from the project. Hence, the ECZ should make a follow up to these companies to see what they have done on the ground and remedy it with the profits the company is making.

In North Western Province, it was discovered that the community do not participate in the EIA process but it is at the discretion of the Chief who may know of EIA processes but rarely cascades this information down to their subjects. It was at the discretion of the people to be proactive in such cases. In the case of Kabompo Hydroelectric Power Station, a public hearing involving everyone in the community was held to avail them an opportunity to ask questions to the developer despite the fact that initial meetings had already been held with the Chief.

On the other hand, in Western Province it was found that communities are mostly consulted at committee levels as they give 20% of the labor requirement and consent from them is required before implementation of any project. Usually communities are involved from project design to the end. In all instances, the traditional leadership through the BRE is brought on board. In the case of the development of the Senanga-Sesheke Road, it was found that information dissemination to the wider community was still perceived to have been inadequate. It was also discovered that locals are selected to the said committees based mainly on the relevance to project and whether they are affected or not.

4.6 Government Institutions


From a government perspective, the EIA's are undertaken and involve them through the District Councils and Chiefs since they are interested parties. It's their responsibility as the primary regulators that everyone in the community is involved in the process not just to come and engage the people once the project is about to start. One official said that they make sure that all the stakeholders attend the meeting concerning any developmental project. This is done by advertising through local radio stations, newspapers and announcements through available information channels. There are adequate consultative meetings for regulators as all these are equal players in the development of their area of jurisdiction.

The ECZ runs advertisements for public hearings which are facilitated by an independent consultant who thereafter prepares a public hearing report documenting all the issues that had been raised during the meeting. However, most government officials lamented that the public does not take interest in reading these documents and in the end the process seems as though it had not been consultative. Very little input comes from the public; hence people are left out on issues that eventually have a bearing on their lives.

Some officials expressed concerned as to why there is a mandate to undergo EIA process before the project resumes but then there are some projects which have started operating without conducting an EIA process. The people are questioning the relevance of the EIA process- “do we really need it in Zambia if some projects are not adhering to the principles required?”

4.6 Civil Society Organisations

From the perspectives of CSOs, it was discovered that they were not aware of the EIA process that have been taking place in their area. This means that they do not even participate in the EIA



process and have never been consulted in any project to air their views on the developmental activities that are taking place in their area.

Most EIAs have not captured accessibility to buildings for people living with disabilities and now through the Buildings Act this issue is being attended to though it will take some time to be fully beneficial to the disabled people.

The CSOs were concerned that key processes, such as the establishment of targets for universal access, reviews of the EIA response and the monitoring of progress in achieving universal access at country level, often still exclude meaningful participation by all key civil society actors, to the detriment of human rights principles of participation. Both from a general public information and human rights perspective, such processes must include not only a few civil society actors selected by the authorities, but meaningful representation of positive networks including but not limited to women's groups, human rights organizations, legal support groups, children's groups, community groups, interested and affected parties as well as employers' and workers' groups. In this regard, sufficient support for meaningful participation of these groups in these processes should be an integral part of achieving universal access to information vital for informed decision making.

4.7 Ensuring Meaningful Public Participation in the Resettlement Process

The active participation of beneficiaries is necessary throughout the various stages of planning, design, implementation and evaluation in order for developmental projects to be truly sustainable. Project implementation was found to be most successful where governments entered into dialogue with the affected population at an early stage in project design. In recent years, there has been an important trend towards the improvement in the preparation of compensation options of resettlement projects and progressive improvement in the participation of the affected communities. Unless careful thought is given to the environmental consequences of proposed relocation sites, the latter may become centers of environmental degradation due to the impact of rapid population increases and the resulting stress placed on local resources such as fuel wood, waste disposal, and pollution of the air and water. In the absence of adequate water supply and sanitation, water pollution and health problems are likely to arise from the flux of new relocates. Planning for the provision of economic and social services at the resettlement site must take into account the needs of both the resettlers and the host communities in order to minimize conflicts and create a common interest in the success of the resettlement program.

CHAPTER FIVE

HUMAN RIGHTS, ENVIRONMENT AND THE PARTICIPATION OF VULNERABLE GROUPS

5.0 Who Are Vulnerable Groups?

This chapter discusses vulnerable groups as ‘population groups that are least involved in the exercise of public powers, have the least access to public economic resources, exert the least influence on distribution of public wealth and are the least capable of maintaining subsistence and seeking self-development in a dignified manner’.

Therefore vulnerable groups in this report refer to children, disabled persons, displaced people, women and those affected/infected by HIV and AIDS. These groups have been selected because they are subject to unfair treatment and, as a result, find it difficult to maintain subsistence and protect their own rights and can easily fall prey to exploitation. Some of the groups have traditionally been victims of violations and consequently require special protection for the equal and effective enjoyment of their human rights. Their rights and interests are easily violable and in social status, they are subordinate to others.

Normally, Human Rights’ instruments set out additional guarantees for persons belonging to these groups; the Committee on Economic, Social and Cultural Rights [ICESCR], for example, has repeatedly stressed that the ICESCR is a ‘vehicle for the protection of vulnerable groups within society, requiring states to extend special protective measures to them and ensure some degree of priority consideration, even in the face of severe resource constraints’. Governments are urged to use due diligence in trying to protect and promote the rights of vulnerable groups.

5.1 The Right to Participation and Development

The findings of this report are that vulnerable groups mostly are left out in decision making processes when it comes to developmental projects going on in their areas and yet they are citizens just like everyone else who have the right to participate in issues that concern them. The Vienna World Conference on Human Rights in 1993 stressed vulnerable people as an important group in society. The conference therefore urged all state parties; ‘to give great importance to the promotion and protection of the human rights of persons belonging to groups which have been rendered vulnerable, including migrant workers, the elimination of all forms of discrimination against them, and the strengthening and more effective implementation of existing human rights instruments’.

This report has also discovered that vulnerable groups in Zambia are most hit by the negative environmental impacts of agriculture, mining, construction, timber processing and tourism sectors. It was further revealed that disadvantaged groups may live and work in or be surrounded by less favourable environmental conditions than the general populace. Factors that are attributed to the above include the lack of knowledge and healthy behaviour. This therefore means that in cases of environmental health impacts, the vulnerable are more likely to be affected as they are much more exposed to pollutants and unsanitary living conditions.

Countries for that reason have an obligation to create and maintain adequate measures at the national level, in particular in the fields of education, health and social support, for the promotion and protection of the rights of persons in vulnerable sectors of their populations and to ensure the participation of those among them who are interested in finding a solution to their own problems. They have the right to participate in any developmental projects either at decision making stage or implementation stage.

Vulnerable groups also have the right to development as shown in Article 1 of the Declaration on the Right to Development [1986] which states that; 'the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized'. This also entails the full realization of the right of peoples to self-determination, which includes the exercise of their inalienable right to full control over all their natural wealth and resources. The vulnerable people have the right to participate in any kind of development in their area and the right to freely live in a better environment without any discrimination of any kind.

5.2 Women's Rights?

The fight for women's rights is often cited as beginning in fifteenth century with publication of a book called 'The City of Ladies' by Christine de Pizan, which stimulated what French feminists call *querelle des femmes* 'translated as debate about women; the debate that continues even to the present day. This long debate has involved the traditional demeaning of women which is a common subconscious, technique of one group seeking to maintain power over another. Demeaning an individual or a group and denying of recognition of that group's contributions to society over time results in stereotyping and when that becomes customary, discrimination results, establishing a rationale for differential treatment of groups and the individuals within the particular group. It is a well known fact that for many years women have been discriminated against both in public and private spheres.

The debates on women issues therefore resulted in women having a treaty of their own; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979). CEDAW prohibits discrimination against women and article 1, therefore defines discrimination against women as 'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'. Women's rights are an inalienable, integral and indivisible part of universal human rights. Women have the same rights as that of men; the right to enjoy freedom from discrimination just as much as men do and the government must do everything within its power to ensure that women's rights are protected.

This report examined the human rights dimension in relation to the environmental impact of mining, tourism, construction, agriculture and timber processing particularly as it relates to women as a special group. This has been done, with regard to the right to life, the right to health, the right to development, the right to access of information and the right to participation in decision-making processes. The structural linkages between gender roles and environment are not fully appreciated, so women are seldom part of decision making.

5.3 Women and the Environmental Issues

The report found out that although women they play a significant role in natural resource and environmental management, their contribution to managing natural resources and safeguarding the environment are not recognized or supported by government policies and programmes. Women are even blamed for environmental degradation. Further, it was revealed that in some areas of the country, women do not exploit and therefore obtain revenue from forests for timber processing and charcoal burning though they use the charcoal for domestic purposes. The report also discovered that very few women own land both in rural

and urban areas of Zambia. Zambian women's enjoyment of land rights in both rural and urban areas is hampered by male dominated structures and patriarchal decision making mechanisms . Zambia's national land policy recognizes the need to increase women's access to land and while current laws do not discriminate against women, women still lack security of tenure to land in comparison with their male counterparts . The lack of women's rights to land has been perpetuated by social and traditional customs. Therefore, men are seen as the owners of the land, while women are regarded as mere users. Zambia's draft Land Policy stipulates that a minimum of 30 percent of available land in Zambia should be set aside for women and other disadvantaged groups . Notwithstanding this highly noble provision, there are no clear guidelines on how to allocate the 30 percent mentioned in the policy and in addition, the 30 percent allocation has been criticized as not being sufficient to meet the demands for land of women and other disadvantaged groups in Zambia. It hasn't really been implemented- NGOCC have a report to that effect.

With regard to the above, it was found that women do not only lack land but are also hard hit by environmental effects for their role as household managers as they come in contact with toxic chemicals in their daily lives; at work as well as in food and household goods. Most of the vulnerable women work in agriculture related fields where they get in contact with chemicals by spraying the fields, weeding or clearing and preparing fields without protective clothing. The right to life for these women is at stake because of the exposure to different doses of pesticides they use and come in contact with. Women are also more exposed to indoor air pollution as a result of combustion; usually incomplete of household fossil fuels given their role as the preparers of food in the home.

According to World Health Organization's studies, 'pesticides are believed to cause reproductive problems, such as spontaneous abortions, stillbirths, lower birth weights, birth defects and early neonatal deaths' . WHO further reports that environmental threats may cause up to one-third of the global burden of disease. Today there is so much use of pesticides by households, farmers spray on crops and treat livestock and there seems to be no control by relevant authorities. Pesticides are found anywhere and sold by anyone in the streets endangering the lives of the general populace. They are also used in Public Health programmes, which include Indoor Spraying of houses or public places. Women once again are exposed more than the men folk as they spend more time inside their homes and in some instances are the ones found spraying their homes with different pesticides to kill household insects and mice. Further compounding the issue, the most vulnerable women have very little or no knowledge on the use of pesticides and these are applied without following any instructions. This is a source of great concern as this exposure to these chemicals is easily transferable to children both in-utero by crossing the placental barrier or through breast milk for pregnant and lactating women respectively. This therefore calls for special mention of this very vulnerable group in international and national legislation regarding the management of these very harmful chemicals.

Nevertheless, article 18 of the protocol on the Rights of Women in Africa, 'recognizes that women have the right to live in a healthy and sustainable environment '. State parties are also advised to take all appropriate measures to 'ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels; promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women's access to, and participation in their control; protect and enable the development of women's indigenous knowledge systems; regulate the management, processing, storage and disposal of domestic waste; ensure that proper standards are followed for the storage, transportation and disposal of toxic waste'

5.4.0 Children's Rights?

All children have basic human rights and must not be discriminated against in any way and this includes those with disabilities. All children deserve equal treatment and opportunities in life. According to the United Nations Convention on the Rights of the Child [UNCRC, 1990], 'a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier'. The Constitution of Zambia as a supreme law does not define a child. There still is no harmonization in the definition of a child in the laws of Zambia and customary definitions; though the child policy of 2006 has tried to harmonize the definition as that contained in UNCRC of 1989. The other statutory laws of Zambia such as the Adoption Act, Labour laws, Wills and Interstate Acts have not harmonized the definition of a child. The lack of a clear definition therefore threatens the enjoyment of children's rights in Zambia. The existence of a dual legal system has greatly contributed to the above because customary law says a child attains majority on commencement of puberty. Customary law raises concerns about the application of such a legal system in that a child can reach puberty at age nine as experienced by many children in the last two decades.

There is an increasing recognition that children may be more susceptible than adults to environmental exposures and that they experience potentially life-long consequences of such exposures. Many studies have shown that children can be exposed to chemical contaminations in breast milk and as well as whilst in the womb. In Zambia a lot of children get exposed to pesticides which are commonly used in households as well as in public places such as schools. According to the World Health Organizations (WHO) report on Children Pesticide Poisoning; pesticide poisoning is a 'serious health problem that disproportionately affects infants and children' worldwide.

However, when improperly used or stored, these chemical agents can also harm humans¹. The key risks identified are cancer, birth defects, and damage to the nervous system and the functioning of the endocrine system. People can be exposed to excessive pesticide levels while working; via food, soil, water or air; or by directly ingesting pesticide products. Pesticides are known to cause millions of acute poisoning cases per year, of which at least one million require hospitalization. However there is no statistics to show the number of children involved in such incidents. In the agriculture sector statistics shows that between one and three (1, 3) agriculture workers per every 100 worldwide suffer from acute pesticide poisoning, and adolescents are often the victims of three to four (3, 4). ¹. The contribution of pesticides to chronic diseases, on the other hand, is unknown.

Therefore tackling the risks to children of pesticide exposure and poisoning requires comprehensive strategies by government and all relevant stakeholders. The strategies should be designed for the communities and supported nationally. They should include research activities on how to develop effective economic and legal instruments. In addition, they should ensure that the public is sensitized and informed. The health conditions of the general populace should be monitored and, where necessary, treatment programs should be established. The need for such strategies is confirmed by a number of international agreements that call for actions to protect children and the environment from the negative effects of human activities.

5.4.1 The Kabwe Lead Issue: a Perspective on Children

According to Goyer R.A (1993), 'the toxic effects of lead have been known for centuries'. Its many useful properties gave rise to a dramatic escalation of lead use around the time of the industrial revolution, when lead poisoning was common amongst workers in the smelting, painting, plumbing, printing and other industries. With the advent of motor vehicles early in the 20th century, and the use of lead in petrol, environmental lead contamination increased substantially. Lead continues to be widely used, especially in developing countries, for example in petrol, paints and pigments, ammunition, cabling, television sets, computers, protective gear, ceramics and cosmetics, and many other ways¹⁹. Children are particularly at high risk of 'exposure to environmental lead, because of their elevated rates of development, ingestion and metabolism, and because of their developmental and behaviour patterns'²⁰. Hand to mouth activity, as part of normal play and development, constitutes the main pathway of childhood exposure to lead rich dust and soil. A study done in South Africa on children lead poisoning showed that children got 'exposed through ingesting paint, cigarette ends, cement, sand or other non-food items²¹'.

In Zambia, in particular Kabwe district more and more children are being treated for lead poisoning. Kabwe is the provincial capital of Central Province of Zambia. The town sits on rich deposits of lead, and it is due to this fact that a mine was opened in 1904. The mine was later closed in 1994, after 90 years of mining, because it was deemed not viable. However the research found that during mining of lead in Kabwe, pollution was not dealt with effectively by relevant authorities. The monitoring of pollution such as water and air pollution was confined to the mines alone. The lead mining resulted in the creation of townships such as Chowa, Kasanda and Luangwa; while Makululu and Katondo mushroomed as shanty compounds where people lived as they looked for employment at the lead mine. Lead poisoning affects all people of different ages in different ways but for the sake of the research report; the focus is on children.

Lead is a metal which is poisonous and toxic to people, especially children, when it is ingested. Although it's no longer used as a gasoline additive or in lead paint, it does continue to be used in many products²². Children are most commonly exposed by the ingestion of lead paint chips or contaminated dirt, though there are many other factors that put children at increased risk. Lead exposure is one of the most common preventable poisonings of childhood. Children with developing bodies are especially 'vulnerable because their rapidly developing nervous systems are particularly sensitive'²³ to the effects of lead. Other studies associate lead poisoning to houses built before 1950 that they have great risks of containing lead based paint.

Exposure to lead can have a wide range of effects on a child's development and behaviour. According to a study done by the American Academy of Child and Adolescent 'it shows that even when a child is exposed to a small amount of lead levels, a child might appear inattentive, hyperactive and irritable²⁴'. The report also says 'children with greater lead levels may also have problems with learning and reading, delayed growth and loss of hearing'. At high levels, lead can cause permanent brain damage and even death.

In line with the above, it was found that a number of children in Kabwe are affected and plagued with problems caused by lead poisoning such as low intelligent quotients (IQs). Some women revealed that they had experienced miscarriages and for the men folk, it was reported that they was a general reduction in their sexual libidos²⁵. The reduced IQ in children occurs when pregnant women are exposed to lead, though there is no concrete evidence to substantiate this finding.

The Kabwe lead poisoning was determined and taken more serious after Zambia Consolidated Copper Mine Investment Holdings (ZCCM-IH) decided to investigate the extent of the lead

poisoning in Kabwe. ZCCM-IH is leading the Kabwe project on children affected by lead mining. Since the project inception in March 2000, ZCCM-IH has been involved in the resolution of post privatization historic liabilities arising from the predecessor company–Zambia Consolidated Copper Mine Limited. In 1995, as attention began to focus on the privatization of ZCCM, one issue that arose was the question of what to do with the environmental degradation caused by the long period of mining, whose responsibility was it?

To this end, studies were conducted to examine water (both surface and ground) and about 2000 blood samples were taken from residents who had illnesses related to that of lead poisoning. The first 10 centimeter (cm) of the soil tested contained lead. The sample soil tested included that taken from the residential areas and fields where food was grown. The food grown was also found to contain lead. Most people get contaminated through the food and inhaling of dust that has lead poisoning.

The study of lead poisoning in Kabwe also discovered that pregnant women in the area get exposed to lead through eating of soil that is contaminated with lead- a habit also known as 'pica'. Another source of lead poisoning is water drawn from a canal; a natural stream in which highly contaminated metals from the mines were discharged. The water from Muswishi River was also tested and was found with sedimentation of lead.

5.5 Measures taken for Reducing Lead Poisoning in Kabwe

ZCCM-IH decided to clean up the lead metals around town either by taking them to places unreachable by the masses or burying the remnants of lead. During the mining years, Kabwe generated its own power. This created a borrow pit which ZCCMIH has to later burry using lead contaminated soils and other remnants of lead. Unfortunately some people got this lead contaminated soil to put and decorate their driveways. ZCCM-IH had to move in to remove the contaminated soil and replaced it with lead free soil. And in order to ensure that residents do not continue exposing themselves to lead, a sensitization programme was put in place to teach people on how to reduce exposure by reducing dust, and washing their vegetables and fruits. Though this was seen as a good measure, it did not yield any fruits because of lack of tap clean water in the affected communities. Instead water from shallow wells was used which is contaminated with lead. The ZCCM-IH project then decided to rehabilitate three boreholes and four sinks, one in Makululu, one in Wanya, one in Katondo and another in chilila. In addition 123 water stands were created.

5.5.1 *Greening the Communities*

The communities around Kabwe were advised by the project to grow green grass around their residential areas to act as a burrier between the lead contaminated surface and surface people were exposed to. Hence people are also encouraged to plant lawn and trees in their yards. However since the communities lacked water, the project facilitated boreholes through Lukanga Water Sources that connected water to about 2000 households.

5.5.2 *Sensitization of communities on Lead poisoning*

Three places were identified thus, Kasanda, Katondo and Makululu where children go to watch television programmes and cartoons about the dangers of lead, and learn how to clean themselves properly. This is done with hope that a child later shares the information with the parents about the dangers and prevention of lead poisoning. The project put up two libraries that provide children with learning materials such as pamphlets and other literature in local languages to enable them read more about lead issues. As for adults programmes are designed

with help of the Resident Development Committees (RDCs) to sensitize adults on effects of lead poisoning.

5.5.3 *Play Parks for Children in Kabwe*

About eleven (11) safe play areas were created for children in different parts of Kabwe and each park has an ablution block though due to vandalism by the communities most of the facilities are not working. The facilities are meant for children aged 7 years and below, but older children also use the facilities and end up vandalizing the same.

5.5.4 *Health Care Facilities*

Children are examined and those needing medical attention are treated through Kabwe General Hospital because it was suggested that lead related ailments be handled through the existing medical facilities. However, three health care centres were been constructed for the treatment of lead poisoning.

5.5.6 *Empowerment Programme*

The lead issues in Kabwe are somehow associated with poverty. This happens when parents scavenge for lead materials to sell in order to raise money to educate and feed their families but end up getting contaminated with lead poisoning. The communities have been provided with water pumps for gardening, a hummer mill and also funds to start a piggery to support their families.

5.5.7 *Education on Lead Poisoning*

ZCCM-IH together with Ministry of Education has included lead education in the curriculum programme through the District Education Boards' (DEBs) office to teach students about the effect of lead and how to mitigate it. As a result all sixth year medical students at the University of Zambia are currently taking a course on lead poisoning. The programme is called community medicines, and it has been running for two years (2009-2011). Leaded fuel was said to be contributing to lead pollution and hence no leaded fuel is being used in Zambia today. The Zambian government through ZCCM Investments Holdings has retained the responsibility for a wide range of environmental concerns, which were not passed on to new mine investors.

The Zambian government sourced funds from the World Bank and the Nordic Development Fund, for the project and hence the establishment of the Copperbelt Environmental Project. The Copperbelt Environmental Project is a government programme, and it is through this project that ZCCM-IH is mandated to manage the implementation, monitoring and review of environmental management projects aimed at mitigating the negative impacts of the historical mining activities prior to privatization (2001) in Zambia.]

In conclusion, while ZCCM-IH is doing a commendable job in tackling this lead poisoning issue, these gains may be negated by the opening of a new manganese mine in Kabwe owned by a Chinese firm. There are fears in Kabwe that in the running of the manganese mine, a disease called manganetosis that results in cancer may result. Moreover it was revealed to the research team that the new manganese mine has been approved by the ECZ and an EIA had also been conducted. There were apprehensions that the new investor was not adhering to the EMP in the implementation of the process particularly that the process of crushing manganese had already commenced.

5.5.8 The Way Forward on the Children

All Children should be screened beginning at an earlier age or age of six to nine months in order to monitor lead poisoning. Children that are found to be at risk (from lead paint exposure, etc.) should be tested with a finger stick blood sample or a venous blood level. However the best prevention for lead poisoning is to provide children with a safe environment that does not contain any of the hazards that are known to put your kids at risk. After being ingested, lead enters the bloodstream and is absorbed and stored in many tissues and organs in the body, including the liver, kidneys, brain, teeth and bones. High levels can cause serious health problems in children and can affect almost every organ system of the body, causing many different symptoms.

Parents should make sure that their homes are free of lead paint and that the lead level in their drinking water is acceptably low. A simple and inexpensive blood test all can determine whether or not a child has a dangerous level of lead in his or her body.



A ZCCM-IH Public Information Center (PIC) in Kabwe

5.5.9 Participation of Children in decision making

It was discovered that children in Zambia do not participate in decision making processes in developmental projects at all levels. Their lack of participation has been associated with traditional and cultural barriers which do not allow children to speak or answer elderly people even on issues that concern them. Although traditional set up discourages them from participating in decision making, the international law allows children to participate in matters that concern them. Children are supposed to be given an opportunity to express their opinions during the planning, implementation and monitoring stages of any developmental project both in the family and public level, because by nature there are the futures of tomorrow and are affected either positively or negatively by the developmental activities.

The research revealed that children do not participate even on issues to do with building a school which is cardinal for they will be users of the school. Therefore they have the right to participate in the EIA of a new school to be built to express their concerns over the site. In the past some projects have been built in play parks for children denying them the right to leisure which is a violation of their rights.

Therefore stakeholders need to involve children in decision making at planning stage of any developmental project. These rights are guided by general principles drawn from selected articles of the UNCRC; thus the right to participation discussed above and the right to non-discrimination. Every government is supposed to make sure the best interests of the child are met. Meaning in all actions concerning children whether undertaken by public or private social welfare institution, the best interest of the child shall be a primary consideration²⁶. The others include the right to survival and development which is formulated and states that 'governments should ensure maximum extent possible the survival and development of the child'²⁷. Children have the right to be protected against harmful substances and economic exploitation and child labor. The report discovered that many vulnerable children today are being used in worst forms of child labor in agriculture, construction and mining activities denying children opportunities to be educated. All children have equal rights to education and no child should be denied this right. Education helps children shape their personality and talents.

5.6 Hazardous Child Labour

Child labor in Zambia is also common with foreign investors in mining and small scale mines where children are employed without considering the age. Poverty has also forced some parents to use their children in stone breaking for selling which is their only source of income. Other children are used for agriculture activities such as spraying harmful chemicals on crops without protective clothing risking their right to health and life. Most children who work in hazardous areas are associated with illnesses such as measles and chest complications. Children are mostly hit hard by poverty which can cause lifelong damage to their minds and bodies²⁸ as well. According to the United Nations International Children Emergency Fund [UNICEF], poverty reduction must begin with children. Therefore the well being of children is a yardstick for measuring national development; because the integrity of a nation is seen from the way it treats its children especially vulnerable ones.

5.7 Rights of Persons with Disabilities

Disability has been defined differently by many scholars; hence the report will give the national and international definitions accordingly. The Zambia Disability Act No. 33 of 1996, defines disability as, 'any restriction resulting from an impairment or inability to perform any activity in the manner or within the range considered normal for a human being, and would or would not entail the use of supportive or therapeutic devices and auxiliary aids, interpreters, white cane, reading assistants, hearing aids, guide dogs or any other animals trained for that purpose'²⁹. However the United Nations Convention on the Rights of Persons with Disability [UNCRPD] defines disability as including "those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others"³⁰. The UNCRPD was adopted by the United Nations General Assembly on 13th December 2006.

The 2011 world report on disability shows about 1 billion people with disabilities experience some form of disability and face substantial barriers in their daily lives. The barriers include 'stigma and discrimination, lack of adequate health care and rehabilitation services; and inaccessible transport, buildings and information and communication technologies'³¹. As a result of the above, disabled persons experience poorer health, lower educational achievements, fewer economic opportunities and higher rates of poverty than people without disabilities. For sustainable development to be achieved at all levels disabled persons needs to be helped to gain equitable access to opportunities to participate and contribute to their communities. Disabled persons have much to offer if given a fair chance to participate in national development at all levels.

It was revealed that disabled people in Zambia are more than twice likely to suffer environmental barriers such as accessing buildings, roads, and inaccessible transport. This burden is more

amplified for those who live in rural areas mostly where medical and other related services are scarce and impairments cannot be detected early enough⁵⁹. Most rural areas in Zambia have no tarred roads or proper roads suitable for wheel chair users. They live in non-electrified houses; they have to move long distances to collect fuel for cooking in the forests and now with the exploitation of forests by timber proprietors, the burden has increased even more. In many societies disabled people are still treated as useless creatures cursed by the gods and this has resulted in many being killed, abandoned to die or condemned to permanent exclusion in asylum".⁶⁰

However the UNCRPD marks a "paradigm shift" in attitudes and approaches to persons with disabilities. The Convention changes the point of view from viewing persons with disabilities as objects of charity, medical treatment and social protection towards viewing them as people with rights⁶², who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society, including the full inclusion of persons with disabilities in education, vocational training, employment and participation in national development. The Vienna World Conference of 1993, also stressed that special attention needs to be paid to ensuring non-discrimination and the equal enjoyment of all human rights and fundamental freedoms by disabled persons, including their active participation in all aspects of society.

Worldwide there is a constant reminder that disabled people have rights just like everyone else and they must not discriminate against them in anyway. Laws are being made for public buildings to have ramps and toilets big enough for wheelchairs⁶¹. In the western countries bus drivers are supposed to announce every stop so that blind people know when to get off. One is not allowed to refuse a person a job on the basis of that he or she has only one leg, or cannot speak. Therefore phrases like "physically challenged" instead of crippled or spastic are now used. We avoid using the word "dumb" to mean stupid – and this is not just us trying to be "politically correct" but things like the "Para Olympics have done wonders to raise people's awareness with so many positive images and perceptions of disabled people genuinely have changed"⁶². Although we still have a long way to go disabled people are far less marginalized, far more integrated than in the past when they were confined to institutions, "out of sight out of mind"⁶³.

Further the UNCRPD, through the eight guiding principles that underlie it emphasizes respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities⁶⁴ of children with disabilities and respect for the right of children with disabilities to preserve their identities.

However in Zambia today, disabled people's own self esteem has risen enormously in recent years and they have become far more assertive and insistent on their rights, and their ability to compete with everyone else⁶³. Even the words disabled and handicapped are challenged... Is a blind person disabled when he or she can function just as well as everyone else⁶⁵ Credit is therefore given to legislatures for making laws that specifically protect and promote the rights of disabled people...new technology has also made a huge difference to the disability world for providing high-tech hearing aids for the deaf, adapted cars for people with one leg to drive or even with no hands at all and recently a "chip was inserted into the brain of a person paralyzed from the neck down enabling him to move a cursor on a screen simply by looking at it"⁶⁴.

59 Elly Macha; Disabled People and Discrimination: A Global Overview (ECHOES)

60 Ibid

61 Chris Wilson, www.disabilityhistory.org

62 Ibid

63 Elly Macha; Disabled People and Discrimination: A Global Overview

64 Chris Wison, www.disabilityhistory.org

Nevertheless the above is mostly enjoyed by disabled people in the “West” and what is it like in Zambia where polio victims still crawl through the traffic on their knees and elbows? Where most disabled persons are not employed and forced to beg, or depend on relatives?

Nevertheless, this report has revealed that disability in Zambia is still regarded as objects of pity. The responsibilities of supporting persons with disabilities in Zambia still fall on the family. Further it has now become widely recognized that the dependency of disabled people on charitable organizations does little to empower disabled persons; it just isolates them from the mainstream of society. Some of those that live in town are either working or self-employed and a good number are in the streets begging.

5.7.1 Disability Rights and the Environment

In Zambia persons with disabilities face numerous barriers in realizing equal opportunities such as limited access to physical environment [both public and private institutions], education and employment, leading to economic and social exclusion. Disability also leads to environmental access, legal, institutional and attitudinal barriers³⁶. Therefore, disability does not just affect the individual, but impacts on the whole community. The right to development for all persons should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.

When it comes to construction in Zambia, the Town and Country Planning Act, Chapter 283 does not include regulation on accessible environment and yet accessibility of the environment is a crucial prerequisite of the participation of persons with disabilities in every sphere of life. Part III of the Act, Sections 16 and 16A regulate the substance of structure plans and local plans, which are the instruments of area planning³⁷. The inclusion of a duty to consider accessibility issues in the preparation of these plans would give the Act more sensitivity in the area of human rights of persons with disabilities. Therefore, there is need to involve disabled persons in drafting such legislation at planning stage if it is to be inclusive. In practice, this could be done through the second schedule of the Act, which regulates on the matters for which provision may be made in a development plan. It covers roads, public services, buildings and other structures, use of land and amenities as such matters³⁸. While all of these matters are important, it would be necessary to prioritize the part of buildings and other structures, as they have the most direct implications to the life of persons with disabilities.

Moreover, Article 25 of the Persons with Disabilities Act of 1996, regulates on accessibility of premises constructed before the commencement of that Act to which members of the public are ordinarily admitted, whether on payment of a fee or otherwise. Although the Article does not reach to ³⁹premises constructed after the commencement of that Act, it gives support to planning the environment to be accessible to persons with disabilities.

5.8 Environment and HIV and AIDS

HIV/AIDS pandemic poses challenges in multiple arenas, as evidenced by the report of the Committee on Economic, Social and Cultural Rights in 2005 on the devastating impact of HIV and AIDS on the enjoyment of the Economic, Social and Cultural Rights by people of Zambia. Zambia population which was estimated at about ‘14 million in 2007 is matched by an estimated HIV prevalence rate among the 15 to 49 years age group’⁴⁰ of X%. HIV and AIDS are shaping society’s impact on the natural environment in many ways and at different levels. This connection of HIV and AIDS and the environment affects millions of people, particularly in rural areas of the country. Local natural resources are an important means of sustenance and income-generation in many rural areas of the country. The health of the local environment can also shape individual vulnerability to HIV and AIDS in at least two ways.

First, resource scarcity often deepens poverty in natural resource dependent areas. Therefore research has demonstrated that desperate economic circumstances can heighten the risk of HIV infection by leading individuals, particularly women and girls, to engage in transactional sex for material goods, sometimes to meet daily sustenance needs⁴¹. Transactional sex can therefore be linked to the environment because when local resources are scarce the result is poverty that leads to risky sex that might result in HIV and AIDS. Second, natural resource scarcity may lead to food insecurity and inadequate diet, which can further undermine the immune system of HIV-infected people. Malnutrition increases the susceptibility of HIV-infected persons to opportunistic infections, while also increasing the risk of HIV transmission from mother to baby⁴². Malnutrition can also reduce the effectiveness of HIV and AIDS treatments.

Nevertheless, HIV and AIDS can also shape household use of the local environment when it deprives families of the labor performed by household members who are disabled or die from the disease. Labor shortages are also exacerbated as caregivers are drawn away from typical household duties. These various constraints may shape decisions about the use of land resources, a key component of rural livelihoods in Zambia. Evidence of these associations is drawn from a three-country study by the Food and Agriculture Organization (FAO), which found that agricultural productivity declined in AIDS affected households. In Kenya, for example, AIDS-affected households cultivated less area because less labor was available. In South Africa, AIDS-affected households failed to weed their cultivated plots, which also reduced agricultural productivity.⁴³ Basic access to land may be lost because of HIV and AIDS illness and death, especially in traditions where women and children have access to land only through their husbands and fathers. Land is inherited or held in trust by male relatives⁴⁴, threatening access of female relatives to this essential component of rural livelihoods.

Moreover local natural resources not only serve dietary needs, but are often used for energy as well. The report revealed that most of the rural areas in Zambia depend on fuel-wood for cooking the family meals and they cannot afford electricity even if they had access to it. This has resulted in increase of local environmental degradation, particularly in areas already overharvested.

In conclusion food security is but one of many dimensions of the pandemic's effect on the natural environment. Therefore recognizing the associations between HIV and AIDS and the natural environment can contribute to the well-being of both human populations and local environments, particularly in rural areas and other places that are characterized by high prevalence of HIV and AIDS and natural resource dependence and scarcity. The report has shown that environmental scarcity can heighten HIV and AIDS vulnerability. A good environmental policy that encourages sustainable use of local environments can benefit public health. Poverty is a driving force in the vulnerability to both HIV and AIDS and unsustainable resource use, poverty reduction efforts could yield substantial gains in both public health and environmental protection.

According to HIV and AIDS studies done in Zambia in 2009; AIDS claimed about "45,000 people in 2009 out of the population of 12,600,000 people; 980,000 people were recorded to have had HIV and AIDS; of this 490,000 were women aged 15 years and above and 120,000 were children"⁴⁵. About 45,000 people died from AIDS related illnesses in 2009. Among the infected and affected are vulnerable groups who are unable to realize their civil, political, economic, social and cultural rights. For example, individuals who are denied the right to freedom of association and access to information may be precluded from discussing issues related to HIV/AIDS, participating in AIDS service organizations and self-help groups, and taking other preventive measures to protect themselves from HIV infection⁴⁶. Women, in particularly young women and disabled people, are more vulnerable to infection if they lack access to information, education and services necessary to ensure sexual and reproductive health and prevention of infection. The unequal status of women in the community also means that their capacity to negotiate in the context of sexual activity is severely undermined. People living in poverty often are unable to access HIV care and treatment, including antiretroviral drugs and other medications for opportunistic infections.

5.8.1 Human Rights and HIV And AIDS

The report revealed that protection and promotion of human rights is essential in preventing the spread of HIV and AIDS to mitigating the social and economic impact of the pandemic. If human rights are protected and promoted there will be reduction in vulnerability to HIV and AIDS infection by addressing its root causes and hence the adverse impact on those infected and affected by HIV is lessened. An effective international response to the pandemic therefore must be grounded in respect for all civil, cultural, economic, political, economic and social rights and the right to development, in accordance with international human rights standards, norms and principles⁴⁷. State's obligations to promote and protect HIV/AIDS-related human rights are defined in existing international treaties.

As earlier mentioned; HIV and AIDS related human rights include the right to life; "the right to liberty and security of the person; the right to the highest attainable standard of mental and physical health; the right to non-discrimination, equal protection and equality before the law; the right to freedom of movement; the right to seek and enjoy asylum; the right to privacy; the right to freedom of expression and opinion and the right to freely receive and impart information; the right to freedom of association; the right to marry and found a family; the right to work; the right to equal access to education; the right to an adequate standard of living; the right to social security, assistance and welfare; the right to share in scientific advancement and its benefits; the right to participate in public and cultural life; and the right to be free from torture and other cruel, inhuman or degrading treatment or punishment"⁴⁸. However the United Nations human rights instruments and mechanisms provide the normative legal framework as well as the necessary tools for ensuring the implementation of HIV and AIDS related rights.

This is done through consideration of states reports, concluding observations and recommendations, and general comments, the UN [treaty monitoring bodies](#) provide States with direction and assistance in the implementation of HIV and AIDS related rights. The Human Rights Council stresses and requests the Secretary-General to solicit comments from Governments, United Nations bodies, programmes and specialized agencies and international and NGOs on steps they have taken to promote and implement, where applicable, programmes to address the urgent HIV-related human rights of women, children and vulnerable groups in the context of prevention, care and access to treatment.

Human rights are therefore directly linked with the spread and impact of HIV and AIDS on individuals and communities around the world. Hence a lack of respect for human rights increase the spread and exacerbates the impact of the disease, while at the same time HIV and AIDS undermines progress in the realization of human rights. The rights of people living with HIV and AIDS often are violated because of their presumed or known HIV status, causing them to suffer both the burden of the disease and the consequential loss of other rights. Stigma and discrimination can also contribute to their lack of access to treatment and this may affect their employment, housing and other rights. This, in turn, contributes to the vulnerability of others to infection, since HIV and AIDS related stigma and discrimination discourages individuals infected with and affected by HIV and AIDS from contacting health and social services. The end result is that those most needing information, education and ⁴⁹counseling might not benefit even where such services are available.

However, strategies to combat the HIV and AIDS epidemic are hampered in an environment where human rights are not respected. For instance, discrimination against and stigmatization of vulnerable groups such as injecting drug users, sex workers, and men who have sex with men drives these communities underground⁵⁰. Similarly, the failure to provide access to education and information about HIV and AIDS, or treatment, and care and support services further increases the AIDS epidemic.

CHAPTER SIX

CONCLUSIONS, RECOMMENDATIONS AND OUTLOOK

6.0 Introduction

This report has shown the strong link between Human Rights and Environment in the context of development. It has clearly shown that every person has the right to development and economic emancipation that goes hand in hand with their civil, political, social and cultural human rights. It has also demonstrated that Zambia being a party to a number of international and regional conventions and covenants is legally obliged to ensure that these rights are realized by every citizen.

As has been shown throughout the report, any discussion concerning Human Rights and the Environment should be premised at the very minimum on the three dimensions being: the Right to a Clean Environment; Environmental Destruction and Procedural Human Rights Issues.

6.1 The Right to a Clean Environment

The Constitution of the country while ensuring Civil and Political rights contained in the Part III-The Bill of Rights, does not explicitly guarantee Social, Cultural and Economic Rights of which Environmental rights are included. It has in part IX the Directive Principles of State Policy which are more an aspiration and not justiciable.

6.2 Environmental Destruction

Zambia is on a rapid economic development path which has seen the exploitation of various environmental sectors indiscriminately. This has resulted in a myriad of environmental ills such as pollution of various kinds, land degradation and perhaps more alarming the ensuing social ills such as massive resettlements, localized increased in HIV/AIDs infections and hazardous child labor. It has been shown within the report that vulnerable groups including women and children have had their rights violated in this quest for economic development.

6.3 Procedural Human Rights

Whilst in principle it could be concluded that the regulatory and governance infrastructure is present to address the fundamentals of access to information, justice and participation; the practice and implementation however still has challenges. It was clearly evident during consultations with various sectors of society in the provinces visited that the local communities felt sidelined and left out on major decision making and this was attributed to factors such as technical nature of information available. It was also shown that access to justice while provided for in the law was hampered by barriers including costs and loci standi of the complainants. There are however initiatives to attend to this and the proposed Environmental Bill of 2010 addresses some of these concerns.

It therefore recommended that while there is a general recognition that development of any kind goes hand in hand with the exploitation of the environment in terms of utilization of the available natural resources. It is to be anticipated that the environment will suffer some kind of negative effects as a result of the developmental agenda if the tenets of sustainable development are not adhered to. However, further cognizance must be taken that humans reside in the environment are therefore part of the environment. This is why the definition of sustainable development as envisaged by the Rio Summit of 1992 encompasses three facets; these being the economic aspects, social and cultural aspects and the ecological or environmental aspects. The three must be present for there to be sustainable development.

The various actors being government, civil society, traditional leadership and general population must all ensure that the three dimensions of the Human Rights and Environmental discourse are taken on board as the country moves on its path to the realization of its vision to be a Middle Income Country by 2010. The Directive Principles of State Policy give general guidance as to the roles that government is to play in ensuring that its people have the Right to a Clean Environment but there is a very urgent need to have this right reflected in the Bill of Rights and make it justiciable thereby making the government fully accountable for its implementation. Further, matters related to environmental destruction should not be taken lightly and the various statutory bodies set up to oversee and regulate pollution issues should perform to fulfil their mandates. Similarly, bodies in charge of the management of natural resources should ensure that their utilization is maximized with minimum side effects on their ecological functions while ensuring that local communities also have a share of the revenues collected.

The private sector through the various principles of Corporate Social Responsibility and the Global Compact should also endeavor to do business in a sustainable manner and uphold the “triple bottom line” of Sustainable Development. They must ensure that while economic gain is their primary concern, social and environmental concerns must also form part of their operating systems so that they carry everyone along in their activities. To the extent possible, they must internalize social and environmental policies within their organization regardless of the enforcement challenges currently being experienced by the various regulators.

Civil Society Organizations also have a very pivotal role to play in the attainment of procedural human rights by the public. It has been shown that the public have not participated as much as they could have in decision making primarily due to the lack of information which is easy to read and access. This presents an opportunity for CSOs to repackage information into various products that will satisfy the needs of the public. For example, it was revealed in the report that most local communities found the Environmental Impact Statements too bulky and full of technical language to engage in any meaningful discussion concerning any developmental projects undergoing EIA; the CSOs could translate the EIS’ and hold public meetings to try and get the communities to understand the technical details of the proposed projects. As has been shown in previous chapters, the access to information is a prerequisite to meaningful participation and where need arises to justice through the structures provided. CSO therefore have a cardinal role to play in complementing the efforts of government and the private sector.

There are however outstanding environmental issues that still require further study as they are potential time bombs as they relate to human rights and the environment. This is in the area of Climate Change and Uranium mining. Several initiatives both at national and international levels have shown that the issues contained within these two areas hinge on violations of Civil and Political rights such as the Right to life and more widely on Social, Economic and Cultural Rights. Procedural human rights issues have been grossly overlooked in the Zambian scenario and this calls for urgent investigations and interventions by all relevant stakeholders.

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**(a) EXCERPT FROM THE CONSTITUTION OF ZAMBIA ON PART III. PROTECTION OF
FUNDAMENTAL RIGHTS AND FREEDOM OF THE INDIVIDUAL**

11. FUNDAMENTAL RIGHTS AND FREEDOMS

It is recognised 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, colour, 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 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.

12. PROTECTION OF RIGHT TO LIFE

- (1) No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.
- (2) No person shall deprive an unborn child of life by termination of pregnancy except in accordance with the conditions laid down by an Act of Parliament for that purpose.
- (3) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases; as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this Article if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case:-
 - (a) for the defence of any person from violence or for the defence of property;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) for the purpose of suppressing a riot, insurrection, mutiny or if he dies as a result of a lawful act of war;
 - (d) in order to prevent the commission by that person of a criminal offence.

13. PROTECTION OF RIGHT TO PERSONAL LIBERTY

- (1) No person shall be deprived of his personal liberty except as may be authorised by law in any of the following cases:
 - (a) in execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence or which he has been convicted;
 - (b) in execution of an order of a court of record punishing him for contempt of that court or of a court inferior to it;
 - (c) in execution of an order of a court made to secure the fulfilment of any obligation imposed on him by law;
 - (d) for the purpose of bringing him before a court in execution of an order of a court;
 - (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;
 - (f) under an order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
 - (g) for the purpose of preventing the spread of an infectious or contagious disease;
 - (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to

drugs or alcohol, or a vagrant, for the purpose of this care or treatment or the protection of the community;

- (i) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Zambia or for the purpose of restricting that person while he is being conveyed through Zambia in the course of his extradition or removal as a convicted prisoner from one country to another; or
 - (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Zambia in which, in consequence of any such order, his presence would otherwise be unlawful.
- (2) any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.
- (3) any person who is arrested or detained:-
- (a) for the purpose of bringing him before a court in execution of an order of a court; or
 - (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia; and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained under paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that the appears at a later date for trial or for proceedings preliminary to trial.
- (4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person.

14. PROTECTION FROM SLAVERY AND FORCED LABOUR

- (1) No person shall be held in slavery or servitude.
- (2) No person shall be required to perform forced labour.
- (3) For the purpose of this Article, the expression "force labour" does not include-
 - (a) any labour required in consequence of a sentence or order of a court;
 - (b) labour required of any person while he is lawfully detained that, though not required in consequence of a sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
 - (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
 - (d) any labour required during any period when the Republic is at war or a declaration under Article 30 or 31 is in force or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period, or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or
 - (e) any labour reasonably required as part of reasonable and normal communal or other civic obligation.

15. PROTECTION FROM INHUMAN TREATMENT

No person shall be subjected to torture or to inhuman or degrading punishment or other like treatment.

16. PROTECTION FROM DEPRIVATION OF PROPERTY

- (1) Except as provided in this Article, no property of any description shall be compulsorily taken possession of,

and no interest in or right over property of any description shall be compulsorily acquired, unless by or under the authority of an Act of Parliament which provides for payment of adequate compensation for the property or interest or right to be taken possession of or acquired.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is shown that such law provides for the taking possession or acquisition of any property or interest therein or right thereover-

- (a) in satisfaction of any tax, rate or due;
- (b) by way of penalty for breach of any law, whether under civil process or after conviction of an offence;
- (c) in execution of judgements or orders of courts;
- (d) upon the attempted removal of the property in question out of or into Zambia in contravention of any law;
- (e) as an incident of a contract including a lease, tenancy, mortgage, charge, pledge or bill of sale or of a title deed to land;
- (f) for the purpose of its administration, care or custody on behalf of and for the benefit of the person entitled to the beneficial interest therein;
- (g) by way of the vesting of enemy property or for the purpose of the administration of such property;
- (h) for the purpose of:-

- (i) the administration of the property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the benefit of the persons entitled to the beneficial interest therein;
- (ii) the administration of the property of a person adjudged bankrupt or a body corporate in liquidation, for the benefit of the creditors of such bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property;
- (iii) the administration of the property of a person who has entered into a deed of arrangement for the benefit of his creditors; or
- (iv) vesting any property subject to a trust in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust;

- (i) in consequence of any law relating to the limitation of actions;
- (j) in terms of any law relating to abandoned, unoccupied, unutilised or undeveloped land, as defined in such law;
- (k) in terms of any law relating to absent or non-resident owners, as defined in such law, of any property;
- (l) in terms of any law relating to trusts or settlements;
- (m) by reason of the property in question being in a dangerous state or prejudicial to the health or safety of human beings, animals or plants;
- (n) as a condition in connection with the granting of permission for the utilisation of that or other property in any particular manner;
- (o) for the purpose of or in connection with the prospecting for, or exploitation of, minerals belonging to the Republic on terms which provide for the respective interests of the persons affected;
- (p) in pursuance of a provision of the marketing of property of that description in the common interests of the various persons otherwise entitled to dispose of that property;
- (q) by way of the taking of a sample for the purposes of any law;
- (r) by way of acquisition of the shares, or a class of shares, in a body corporate on terms agreed to by the holders of not less than nine-tenths in value of those shares or that class of shares;
- (s) where the property consists of an animal, upon its being found trespassing or straying;
- (t) for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry or, in the case of the land, the carrying out thereon:-

- (i) of work for the purpose of the conservation of natural resources or any description; or
- (ii) of agricultural development or improvement which the owner or occupier of the land has been

required, and has without reasonable and lawful excuse refused or failed, to carry out;

- (u) where the property consists of any licence or permit;
 - (v) where the property consists of wild animals existing in their natural habitat or the carcasses of wild animals;
 - (w) where the property is held by a body corporate established by law for public purposes and in which no moneys have been invested other than moneys provided by Parliament;
 - (x) where the property is any mineral, mineral oil or natural gases or any rights accruing by virtue of any title or licence for the purpose of searching for or mining any mineral, mineral oil or natural gases:-
 - (i) upon failure to comply with any provision of such law relating to the title or licence or to the exercise of the rights accruing or to the development or exploitation of any mineral, mineral oil or natural gases; or
 - (ii) in terms of any law vesting any such property or rights in the President;
 - (y) for the purpose of the administration or disposition of such property or interest or right by the President in implementation of a comprehensive land policy or of a policy designed to ensure that the statute law, the Common Law and the doctrines of equity relating to or affecting the interest in or rights over land, or any other interests or right enjoyed by Chiefs and persons claiming through and under them, shall apply with substantial uniformity throughout Zambia;
 - (z) in terms of any law providing for the conversion of titles to land from freehold to leasehold and the imposition of any restriction on subdivision, assignment or sub-letting;
 - (a) in terms of any law relating to:-
 - (i) the forfeiture or confiscation of the property of a person who has left Zambia for the purpose or apparent purpose, of defeating the ends of justice;
 - (ii) the imposition of a fine on, and the forfeiture or confiscation of the property of, a person who admits a contravention of any law relating to the imposition or collection of any duty or tax or to the prohibition or control of dealing or transactions in gold, currencies, or securities.
- (3) An Act of Parliament such as is referred to in clause (1) shall provide that in default of agreement, the amount of compensation shall be determined by a court of competent jurisdiction.

17. PROTECTION FOR PRIVACY OF HOME AND OTHER PROPERTY

- (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision:-
- (a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or in order to secure the development or utilisation of any property for a purpose beneficial to the community;
 - (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
 - (c) that authorises an officer or agent of the Government, a local government authority or a body corporate established by law for a public purpose to enter on the premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority, or body corporate, as the case may be; or
 - (d) that authorises, for the purpose of enforcing the judgement or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order;

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justified in a democratic society.

18. PROVISIONS TO SECURE PROTECTION OF LAW

- (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

- (2) Every person who is charged with a criminal offence:-
- (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
 - (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;
 - (c) shall be given adequate time and facilities for the preparation of his defence;
 - (d) shall unless legal aid is granted him in accordance with the law enacted by Parliament for such purpose be permitted to defend himself before the court in person, or at his own expense, by a legal representative of his own choice;
 - (e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and
 - (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge; and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.
- (3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.
- (4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time it was committed.
- (5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.
- (6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.
- (7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.
- (8) No person shall be convicted of a criminal offence unless that offence is defined and the penalty is prescribed in a written law:

Provided that nothing in this clause shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in written law and the penalty therefore is not so prescribed.

- (9) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.
- (10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.
- (11) Nothing in clause (10) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority:-
- (a) may consider necessary or expedient in circumstances where publicity would prejudice the interest of justice or in interlocutory proceedings; or
 - (b) may be empowered by law to do in the interest of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of:-

- (a) paragraph (a) of clause (2) to the extent that it is shown that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
- (b) paragraph (d) of clause (2) to the extent that it is shown that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under Zambian customary law, being proceedings against any person who, under that law, is subject to that law;
- (c) paragraph (e) of clause (2) to the extent that it is shown that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;
- (d) clause (2) to the extent that it is shown that the law provides that:-
 - (i) where the trial of any person for any offence prescribed by or under the law has been adjourned and the accused, having pleaded to the charge, fails to appear at the time fixed by the court for the resumption of his trial after the adjournment, the proceedings may continue notwithstanding the absence of the accused if the court, being satisfied that, having regard to all the circumstances of the case, it is just and reasonable so to do, so orders; and
 - (ii) the court shall set aside any conviction or sentence pronounced in the absence of the accused in respect of that offence if the accused satisfies the court without undue delay that the cause of his absence was reasonable and that he had a valid defence to the charge;
- (e) clause (2) to the extent that it is shown that the law provides that a trial of a body corporate may take place in the absence of any representative of the body corporate upon a charge in respect of which a plea of not guilty has been entered by the court;
- (f) clause (5) to the extent that it is shown that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention, clause (1), paragraphs (d) and (e) of clause (2) and clause (3) shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in detention.

(14) In its application to a body corporate clause (2) shall have effect as if the words "in person or" were omitted from paragraph (d) and (e).

(15) In this Article "criminal offence" means a criminal offence under the law in force in Zambia.

19. PROTECTION OF FREEDOM OF CONSCIENCE

- (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this Article the said freedom includes freedom of thought and religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.
- (2) Except with his own consent, or, if he is a minor, the consent of his guardian, no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.
- (3) No religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by the community or denomination or from establishing and maintaining institutions to provide social services for such persons.
- (4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.
- (5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision which is

reasonably required –

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion without the unsolicited intervention of members of any other religion:

and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justified in a democratic society.

20. PROTECTION OF FREEDOM OF EXPRESSION

- (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence.
- (2) Subject to the provisions of this Constitution no law shall make any provision that derogates from freedom of the press.
- (3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision:-
 - (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or
 - (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or the registration of, or regulating the technical administration or the technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television; or
 - (c) that imposes restrictions on public officers; and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.

21. PROTECTION OF FREEDOM OF ASSEMBLY AND ASSOCIATION

- (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision –
 - (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
 - (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
 - (c) that imposes restrictions upon public officers; or
 - (d) for the registration of political parties or trade unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such register including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration; and except so far as that provision or, the thing done under the authority thereof as the case may be, is shown not to be reasonably justifiable in a democratic society.

22. PROTECTION OF FREEDOM OF MOVEMENT

- (1) Subject to the other provision of this Article and except in accordance with any other written law, no citizen shall be deprived of his freedom of movement, and for the purposes of this Article freedom of movement means –

- (a) the right to move freely throughout Zambia;
 - (b) the right to reside in any part of Zambia; and
 - (c) the right to leave Zambia and to return to Zambia.
- (2) Any restrictions on a person's freedom of movement that relates to his lawful detention shall not be held to be inconsistent with or in contravention of this Article.
- (3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision –
- (a) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or public health or the imposition or restrictions on the acquisition or use by any person of land or other property in Zambia, and except so far as that provision or, the thing done under the authority thereof, as the case may be, is shown not be reasonably justifiable in a democratic society;
 - (b) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Zambia;
 - (c) for the imposition of restrictions upon the movement or residence within Zambia of public officers; or
 - (d) for the removal of a person from Zambia to be tried outside Zambia for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

23. PROTECTION FROM DISCRIMINATION ON THE GROUND OF RACE, ETC.

- (1) Subject to clauses (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.
- (2) Subject to clauses (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.
- (3) In this Article the expression "discriminatory" mean, affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.
- (4) Clause (1) shall not apply to any law so far as that law makes provision –
- (a) for the appropriation of the general revenues of the Republic;
 - (b) with respect to persons who are not citizens of Zambia;
 - (c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
 - (d) for the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or
 - (e) whereby persons of any such description as is mentioned in clause (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.
- (5) Nothing contained in any law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is shown that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.
- (6) Clause (2) shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision or law as is referred to in clause (4) or (5).
- (7) No thing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision

whereby persons of any such description as is mentioned in clause (3) may be subjected to any restriction on the rights and freedoms guaranteed by Articles 17, 19, 20, 21 and 22, being such a restriction as is authorised by clause (2) of Article 17, clause (5) of Article 19, clause (2) of Article 20, clause (2) of Article 21 or clause (3) of Article 22, as the case may be.

- (8) Nothing in clause (2) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

24. PROTECTION OF YOUNG PERSONS FROM EXPLOITATION

- (1) No young person shall be employed and shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development:

Provided that an Act of Parliament may provide for the employment of a young person for a wage under certain conditions.

- (2) All young persons shall be protected against physical or mental ill-treatment, all forms of neglect, cruelty or exploitation.
- (3) No young person shall be the subject of traffic in any form.
- (4) In this Article "young person" means any person under the age of fifteen years.

25. DEROGATION FROM FUNDAMENTAL RIGHTS AND DETENTION

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of Articles 13, 16, 17, 19, 20, 21, 22, 23, or 24 to the extent that it is shown that the law in question authorises the taking, during any period when the Republic is at war or when a declaration under Article 30 is in force, or measures for the purpose of dealing with any situation existing or arising during that period; and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions if it is shown that the measures taken were, having due regard to the circumstances prevailing at the time, reasonably required for the purpose of dealing with the situation in question.

- (b) EXCERPT FROM THE CONSTITUTION OF ZAMBIA ON PART IX. DIRECTIVE PRINCIPLES OF STATE POLICY AND THE DUTIES OF A CITIZEN

(As amended by Act No. 18 of 1996)

110. (1) The Directive Principles of State Policy set out in this Part shall guide the Executive, the Legislature and the Judiciary, as the case may be, in the Application of Directive Principles of State Policy
- (a) development of national policies;
- (b) implementation of national policies;
- (c) making and enactment of laws; and
- (d) application of the Constitution and any other law.
- (2) The application of the Directive Principles of State Policy may be observed only in so far as State resources are able to sustain their application, or if the general welfare of the public so unavoidably demands, as may be determined by Cabinet.

111. DIRECTIVES NOT TO BE JUSTICIABLE

The Directive Principles of State Policy set out in this Part shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity.

112. DIRECTIVE PRINCIPLES OF STATE POLICY

The following Directives shall be the Principles of State Policy for the purposes of this Part:

- (a) the State shall be based on democratic principles;
- (b) the State shall endeavour to create an economic environment which shall encourage individual initiative and self reliance among the people and promote private investment;

- (c) the State shall endeavour to create conditions under which all citizens shall be able to secure adequate means of livelihood and opportunity to obtain employment;
- (d) the State shall endeavour to provide clean and safe water, adequate medical and health facilities and decent shelter for all persons, and take measures to constantly improve such facilities and amenities;
- (e) the State shall endeavour to provide equal and adequate educational opportunities in all fields and at all levels for all;
- (f) the State shall endeavour to provide to persons with disabilities, the aged and other disadvantaged persons such social benefits and amenities as are suitable to their needs and are just and equitable;
- (g) the State shall take measures to promote the practice, enjoyment and development by any person of that person's culture, tradition, custom or language insofar as these are not inconsistent with this Constitution;
- (h) the State shall strive to provide a clean and healthy environment for all;
- (i) the State shall promote sustenance, development and public awareness of the need to manage the land, air and water resources in a balanced and sustainable manner for the present and future generation; and
- (j) the State shall recognise the right of every person to fair labour practices and safe and healthy working conditions.

113. DUTIES OF CITIZEN

It shall be the duty of every citizen to-

- (a) be patriotic and loyal to Zambia and to promote its well-being;
- (b) contribute to the well-being of the community where that citizen lives, including the observance of health controls;
- (c) foster national unity and live in harmony with others;
- (d) promote democracy and the rule of law;
- (e) vote in national and local government elections;
- (f) provide defence and military service when called upon;
- (g) carry out with discipline and honesty legal public functions;
- (h) pay all taxes and duties legally due and owing to the State; and
- (i) assist in the enforcement of the law at all times.



