



Conflict between mining project and environmental protection -Analyzing NGOs' legal mobilisation against of mining in the Lower Zambezi National Park

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Disclaimer:

This document represents part of the author's study programme while at the International Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

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List of Acronyms

ARD	Acid Rock Drainage
CBD	Convention on Biological Diversity
CBNRMF	Community Based Natural Resource Management Forum
CRHWCT	Chalimbana Rivers head Water Conservation Trust
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EMA	Environmental Management Act
ESCR	Economic Social and Cultural Rights
FEI	Friends of the Earth International
GDP	Gross Domestic Product
ICCPR	International Covenant on Civil Political Rights
IUCN	International Union for Conservation of Nature
KCM	Konkola Copper Mine
LZNP	Lower Zambezi National Park
MDGs	Millennium Development Goals
MEAs	Multilateral Environmental Agreements
MNC	Multinational Corporations
NSMs	New Social Movements
PF	Patriotic Front
SADC	Southern Africa Development Community
SDGs	Sustainable Development Goals
TFCA	Trans Frontier Conservation Area
UNCED	United Nations Framework Convention of Climate Change
UNESCO	United Nations Educational, Scientific and Cultural Organization
ZAWA	Zambia Wildlife Authority
ZCBRMF	Zambia Community Based Natural Resources Management Forum
ZCCN	Zambia Climate Change Network
ZEMA	Zambia Environmental Management Authority.

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Abstract

Conflicts between environmental protection and exploitation for economic gains in Zambia has led to politicians pushing for mining for economic gain and environmental conservation-ist civil society organisation taking legal action for environmental protection. The qualitative interviews research conducted through online Skype and Zoom Meeting video calls due to COVID-19 travel limitations, analyzes the civil society organizations' legal mobilisation against the mining activity in the Lower Zambezi National Park for environmental rights protection. Although with different specific areas of environmental concerns, the civil society organizations were concerned about endangered local communities' livelihoods and animals' welfare. In a bid to protect the environmental rights, they engaged in strategic litigation involving court case supported by other strategies such as public protests, advocacy, social mobilization, engaging international non-governmental organizations and online media petition.

Despite not outrightly winning the court case, the strategic litigation managed to halt the mining project. The strategy of using different media platforms raised awareness such that many Zambians voices began speaking against the mining project forcing the president to halt the project and promising that he would follow the will of the people. Considering growing environmental catastrophes in Zambia such as droughts and large-scale mining pollution rendering land unproductive thereby threatening livelihoods, environmental protection needs to be prioritized. Social mobilisation strategy to raise more voices to speak against violation of environmental rights needs to be intensified.

Relevance to Development Studies

Human Rights based approach has been identified as the appropriate way to bring development. The economic socio and cultural rights (ESCR) require both the government and its citizen to act together to foster development. the civil and political rights empower citizen with the freedom of speech, assembly, and association through which they can claim their rights (Marks, 2005: 23) . Individual citizens participate in development by accessing unspoiled natural resources to meet their needs. This demand sustainable management of environment including safeguarding areas meant for habitation for various species as these act as environmental buffer zones against adverse climatic weather conditions which would if not controlled would deny human opportunities to have access to natural resources for their survival collectively environmental rights (Cabeza, 2019: 3 Gearty, 2010:18)

Legal mobilisation is a right based approach involving the use of law-based strategies to claim human rights (Handmaker, 2019:5). Understanding the importance of environmental rights for human development, the topic of legal mobilisation for environmental rights is imperative to development as analyzes experiences encountered by the civil society organizations during legal mobilisation and best strategies to be employed for environmental protections which has been said to be critical for development. Studies.

Keywords

Environmental rights, civil society organization, legal mobilization, environmental justice, and human rights,

Chapter 1

Introduction

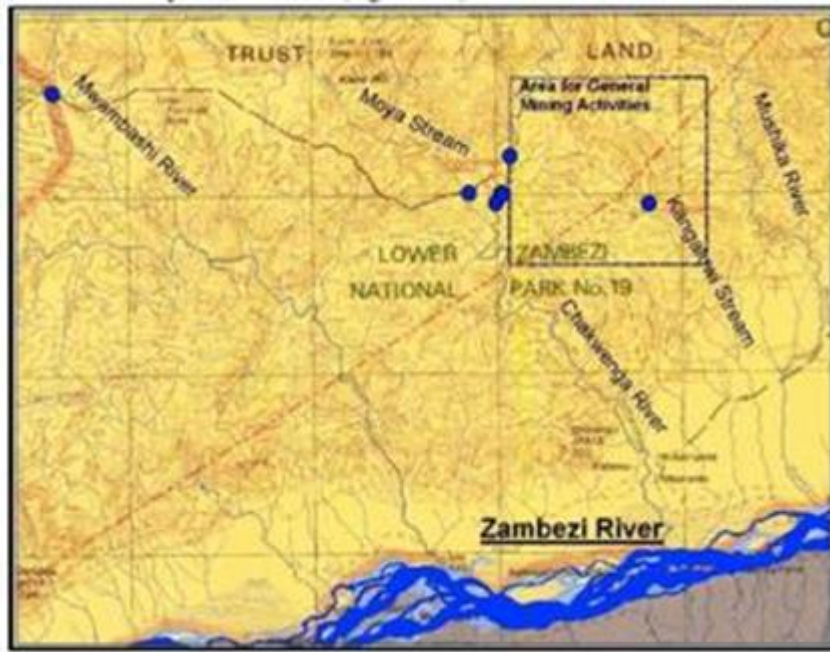
1.1 Contextual background

Market globalization as a prerequisite for development has had many developing countries open up for foreign direct investment including Zambia (Wood, 2002: 11). Although market globalization has contributed to an increase in Gross Domestic Product (GDP), it has been synonymous with the destruction of culture and environment due to unsustainable means of production especially the extractive industry (Marglin, S., 2009; Dally, 2005). Some the environmental degradation arising from capital accumulation is said to have violated fundamental human rights indirectly due to pollution threatening health, rendering land unproductive, biodiversity loss and climate change causing food insecurity (Vanderheiden, 2017: xii; Conca and Dabelko, 2019: 336).

According to Geart (2010), violation of such human rights is a violation of environmental rights. Humans need a healthy environment to live in and access to quality environmental resources for their survival and to realize their Economic Social and Cultural Rights (ESCR). (Gearty, 2010; 14). Because environment laws are embedded in economy and politics, politicians interested in GDP growth have been reluctant to comply with these laws both at international and national level worsening environmental degradation and violating environmental rights (Turner, 2013). Civil society organizations and environmental activists have now resorted to mobilizing law to claim environmental rights which is a matter of social justice (Vanhala, L. 2018).

Like many global South countries specialized in raw material exportation for their GDP, Zambia's economy has been 90% dependent on copper export during colonialism and after independence in 1964. Following the liberalization of the economy in 1991 and subsequent privatization of mining industry in 2000, the mining industry witnessed an inflow of foreign direct investment. The nation's economy has since remained dependent on copper exports (Fraser and Larmer 2010). The incentives to attract foreign direct investment improved the country's copper production making Zambia the 8th world largest copper producing country (Stipp, 2019). Zambia rank number 8 on world top copper producing countries (World Atlas, 2017). About 70% of the country's GDP comes from the extractive industry (World Bank, 2016). The blossom in the mining industry, however, has not translated into improved lives for the local people due to weak development agreements and negative environmental effects violating human rights (Sambo, 2019: 4). About 58 percent Zambian are said to live below the poverty line and 32 per cent live in abject poverty (World Bank, 2019).

Mineral explorations have continued with the latest being in the Lower Zambezi National Park (LZNP) a protected area for biodiversity by Mwembeshi Resources Limited, a subsidiary of an Australian Stock Exchange Listed Company called the Zambezi Resources Limited. The national park is a habitat for 124 animal, 403 bird, and 54 aquatic species which attract tourists worldwide (Sausage Tree Camp Lodge, 2019). Two big rivers the Chakwenga and Mushika and some stream flow through proposed mining area into the Zambezi River (Pettersson et al. 2012;5).

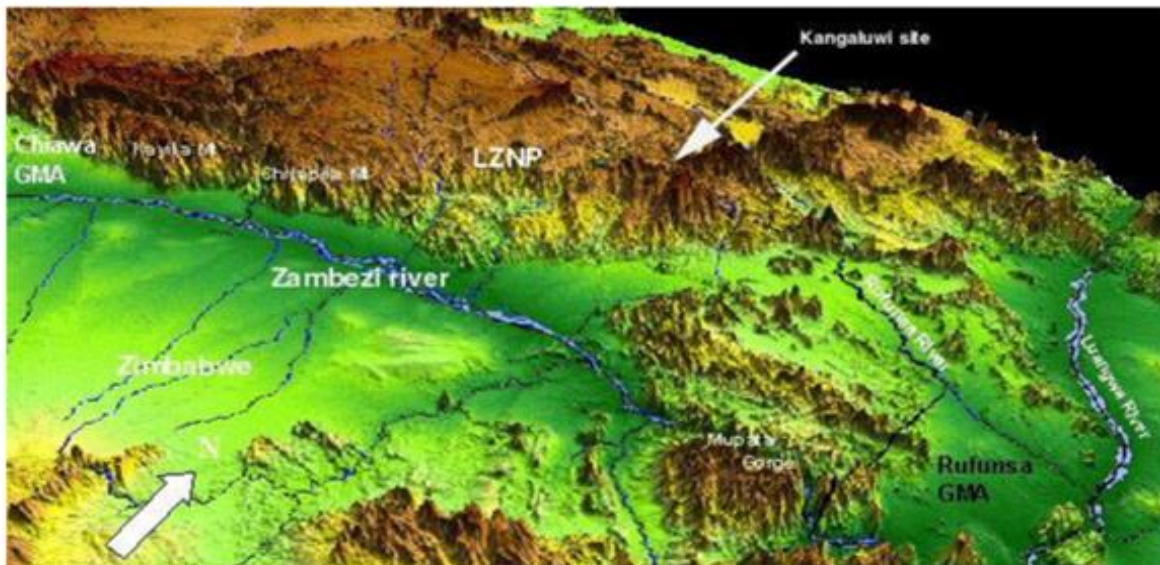


Map 1. above shows a map of the main rivers and streams draining the Project site. The watershed within the license area lies between the Chakwenga and Mushika Rivers that drain directly into the Zambezi River. (image taken from Leigh, 2014: 7)

Down the river communities have their gardens, farms, and their animal drink water from the river. The Zambezi River is an international river diving two countries from south east Zambia and Zimbabwe, both have national parks on their banks the LZNP on the Zambian Side and Mana Pool National Park a UNESCO World Heritage Site on the Zimbabwean side (UNESCO, 2014) . The mining project has been said to have huge potential to cause environmental degradation due to its topography which may result to strife between proprietors and local Zambians and its neighbouring countries Malawi, Mozambique and Zimbabwe that share the Zambezi River with Zambia (Leigh, 2014: 62).



Map 2. The green area on the Zimbabwean side shows the Mana Pool National Park a UNESCO World Heritage Site



Map 3. Topographical illustration of the geographical location of the Kangakwi Mine site in the Zambezi escarpment; showing its elevation in the catchment and immediate proximity to direct tributaries to the Zambezi River bordering between Zambia and Zimbabwe (image taken from Leigh, 2014: 7).

Protected areas are important for conservation of biodiversity, national heritage, home of different species, maintenance and balancing of ecosystems needed for man to enjoy environmental rights. However, due to dependence on the environment for survival these are always under threat to extinction due to human activity in the conservation areas (Wawryk, 2014; 1). Three types of protected areas said to exist state (run by the state exclusive), private (owned by individuals) and community (managed in partnership between states and communities) protected areas (Leménager et al, 2014: 238). Despite the perceived benefits, creations of protected areas have been criticized of violating human rights as communities are displaced from their traditional sources of livelihoods especially in rural areas and human-wild-life conflicts (Desmet, 2010:10; Snijders et al, 2019: 1)

The Zambian government recently approved mining in the protected area the Lower Zambezi National Park. In the first place the ministry of mines approved the mining license for Zambezi Resources Ltd an Austrian Stock Exchange Listed Company called the Zambezi Resources Limited, which is now called, Trek Metals Limited (Tassel, 2019:5) , Zambia Environmental Management Agency after studying the Environmental Impact Assessment (EIA) disapproved the project because according to them the proprietors did not give clear guidelines on how they were going to avoid or reduce negative environment effects which had potential to disturb the important ecosystem (Steyn , 2012).

The minister of Land, Natural Resources and Environmental Protection using his discretion overturned the decision by ZEMA and granted for the mining activity to go ahead citing that the project would create employment for many Zambians, there were new technologies to reduce the negative environmental impact and the same company was going to enhance the wildlife conservation. The Community Based Natural Resource Management Forum (CBNRMF) supported by other 4 civil society organizations and an individual expert appealed against the Minister's decision though the High Court in 2014 (Leigh, 2014; 3). After 4 years of non-litigation, in October 2019, the high court gave a ruling for the mining activity to go ahead. After this 16 NGOs a said to have assembled giving a statement against mining which forced the president to halt the process. (Mackenzie, 2019). By the time of research, the civil society organizations had appealed to the Zambia Supreme Court against the High Court ruling.

Therefore, the purpose of this research is to analyse the legal mobilization, to understand their legal claim, the strategies they used, the capacity challenge and rifts in the application of law and what strategies and legal reforms can enhance environmental rights protections

1.2. Research Problem Statement

To safeguard human welfare, the environment and promote sustainable development amidst capital investment for economic growth, the Zambia Environmental Management Authority (ZEMA) was established through the Act of Parliament as an autonomous regulatory and coordinating agency (ZEMA, 2019). The Environmental Management Act (EMA) of 2011 requires that huge investment developers to submit an environmental impact assessment (EIA) reports which Mwembeshi Resources Limited submitted. The findings in the EIA by ZEMA indicated the project was incompatible with biodiversity aims and had potential significant negative environmental impact compared to the expected benefits. The ZEMA therefore, objected to the execution of the project (Leigh, 2014; 12).

The Mines and Minerals Development Act (2008) and EMA (2011) have a provision for the developers to appeal through the Minister of Land, Natural Resources and Environmental Protection against ZEMA's decision of which the developers successfully did. In response the single minister overturned ZEMA's decision citing economic reasons on 17th January 2011 (Leigh, 2014 p77). Besides that, the Mines and Minerals Development Act (2008) and the Zambia Wildlife Act (1998) allows to some extent mining activities in protected areas. Article 255 of the Constitution of Zambia Amendment 2016 provides principles of environmental and natural resources management and development. Sub-Article 255(d) imposes a duty for the conservation and protection of ecologically sensitive areas, habitats, species, and other environment to be done in a sustainable way. But it lacks legal guidelines on what extent the mining can be allowed and how the conservation should be done. As a result, the Minister of Land and Natural Resources is left to approve projects which can lead to high levels of environmental degradation in the interest of economic growth while violating environmental rights (Vanderheiden, 2017; xi).

The International Union for Conservation of Nature (IUCN) lacks tenets for enforceability due to its embeddedness in politics of global capitalism. States parties to the agreement are required to formulate policies according to their situation. There is also no monitoring mechanism and hence states like Zambia and business can easily decide against environmental protection (Pring, G., 2020: 410).

Politician decisions are now challenged through the courts of law by the NGOs and civil society organizations who sue the government and polluters for compensation for the violation of environmental rights. In the case of the LZNP, a day after the minister's granting of the mining to go ahead on 4th February 2014 civil society organizations, namely the Zambia Community Based Natural Resources Management Forum (ZCBRMF), the Zambia Climate Change Network, Chalimbana River Head Waters and Conservation Trust, and one Zambian named David Ngwenyama, aggrieved appealed to the High Court of Zambia and an injunction to stay the execution of Mwembeshi Resources Limited's mining plan was granted on 17th October, 2014. Now, recently on the 17th October 2019, the Zambian High Court dismissed the injunction for failure to prosecute and allowed the mining to proceed (Lusaka Times, 2019).

Zambia is already faced with drought for three consecutive seasons causing food insecurity for most peasant farmers who are majority and depend on farming for their livelihoods, thereby depriving majority Zambians their enjoyment of Economic, Socio and Cultural Rights (ESCR) (Caritas, 2020). Properties such as national parks need to be protected from extractive industries through good policy framework, legal mobilisation to claim

environmental rights for the present and future generations. If there is any way through which the future generations are considered is through environmental conservation and the current generation owe the environment to the future generations (Desmet, 2010;138).

1.3 Justification of study

This research is imperative to be conducted as it has both societal and academic relevance, considering that the cases of environmental and water pollution affecting humans and both domesticated and wild animals have kept increasing on the Copperbelt province with traces in many parts of the countries through which the Kafue River flow despite having legal framework and adequate policy to protect the environment (Chipasha, 2019;1). Although the Mines and Mineral Act allows mining activities to some extent, there is no proper guidelines when such must be allowed. The Environmental Management Act provides for the developer to appeal to the Minister is they are not satisfied with the ZEMA decision. There is not laid down basis of appealing and a single Minister can overturn the decision which defeats the whole objective of having ZEMA as an autonomy organisation whose decision should be binding.

Therefore, the research endeavors study the legal mobilisation by the civil society organisation to find their experiences and opportunities discovered which could contribute to environmental protection to safeguard environmental rights. The study will contribute to the theory of legal mobilisation approach to claim environmental rights and environmental justice and policy tools to safeguard the environment amidst politics and capitalist business.

1.4. Research objectives and question

1.4.1. General Objective:

To find out the experience of the NGOs' legal mobilisation against mining in the Lower Zambezi National Park to protect environments rights.

1.4.2. Specific Objectives:

1. To analyse if environmental rights are there main concern.
2. To understand challenges faced in terms of resources constraints, representation, legal procedure, and law implementation with regards to politics.
3. To find out what can be done to improve environmental protection.

1.4.3. Research Questions:

What are the challenges and opportunities experienced by NGOs involved in legal mobilisation for environmental rights with regards to the Lower Zambezi National Park in Zambia? What lessons can be learnt which can contribute to the concept of legal mobilisation for environmental rights and environmental policies in Zambia?

1.5.4. Research Sub-Questions

1. What specific environmental rights, local and international legal framework associated with the LZNP would be violated by the mining project and which compelled the civil society organizations to take legal action?
2. What strategic institutions or organizations to whom the legal mobilisation was targeted, and strategies were used to obtain the change needed?
3. What are some of the rifts with regards to law application experienced as civil society organizations?
4. What are the recommendations on how legal mobilisation for environmental rights protection can be strengthened from the lesson learned?

Chapter 2 | Theories underpinning the study and Methodological strategies

2.1: Introduction

In this chapter I will discuss the theoretical approaches and methodological strategies. Two sections will form this chapter, the first will be theoretical standpoint and the second the methodologies employed.

2.2. Theories underpinning the study

The following theories will form the theoretical framework.

2.2.1. Environmental Rights

Environmental rights as argued by Gearty (2010) are human rights and refer to access to unspoiled landscape for good health, livelihoods and existence which depend quality of the environment. According to Friends of the Earth International (FEI) (2020), environmental rights have been defined as

“access to the unspoiled natural resources that enable survival, including land, shelter, food, water and air and also include more purely ecological rights, including the right for nonhuman living creatures to survive or the right for and enjoy an unspoiled landscape.”

For the purpose of this thesis, environmental rights refer to humans accessing unspoiled environment for their survival, livelihoods and good health, rights for non-human living organisms to enjoy unpolluted environment for their survival and their right to life.

Therefore, environmental protection is said to be critical as its degradation violates the human rights especially of the poor who directly depend on natural resources for survival. Environmental protection for non-human living creatures and nature itself directly and indirectly benefit humans. For example tourism in the national parks earn countries like Zambia foreign exchange and provide jobs, conservation of marshlands and dumbos help regulate climatic weather conditions critical for human survival (Bwalya et al 2020: 2 Wardekker, et al, 2016: 1) This link between human rights and environment first arose during the 1972 Stockholm Conference during which the nexus between environment and human rights began with focus on Human and the Environment due to the emanating global environmental crisis (Gearty, 2010: 14).

The realization of the ESCR requires considerable access to environmental resources to develop (Mark, 2005: 38). However, the theory of environmental rights does not give the extent to which environmental protection for environmental rights protection and exploitation for the realization of ESCR should be allowed (Vanderheiden, 2017: xi).

Conflicts between environmental protection and exploitation for economic growth as in the case Ranamafana National Park in Madagascar and South Australia's Arkaroola Wilderness have been recorded. In both cases, minerals exploration reviewed potential benefits from mining compelling states to allow mining projects in the sensitive areas of national parks against the ideals of environmental conservationists who objected the mining activities (Cabeza et al, 2019: 417; Wawryk, 2019: 292). Resolving such conflicts through legal framework has failed as international environmental law which informs local legal framework as claimed by Vanderheiden (2017) is embedded in international law of economy. Vanderheiden further argues that the global system is neocolonialism which is why multinational

corporations (MNC) from global North are responsible for environmental degradations and human right abuses in the Third World countries as they plunder resources due to global capitalism (Vanderheiden, 2017: 7).

Despite lack of clarity between environmental rights and protection, the theory of environmental rights imperative for analysis the environmental rights of concern for the civil society organizations does focus on the poor who directly depend on natural resources for the survival whose rights are often violated due to environmental degradation caused by MNC from rich countries as in the case of the residents of Chingola municipality in Zambia who lost their livelihoods and suffered ill health due to pollution caused by Konkola Copper Mine effluent since 2005 and sort reparations the courts of justice (Mukwakwa, 2020: 2). Environmental rights do not refer to humans only but also non-human living organisms as they deserve the rights to live and nature of itself. Further, protected areas apart from being habitats for biodiversity, they are said to be critical as their ecology provides water, food, buffer for adverse weather conditions such as droughts and floods, prevention of soil erosion and recreation to mention but a few important for human survival (FEI, 2020;). Hence the use of the theory of environment rights.

Environmental rights are said to go together with international covenant on civil and political rights (ICCPR) which empowers civil society organisation interested in environmental conservation using human right approach to claim environmental rights (Linzey, 2009). Bridget Lewis (2012) has also claimed that human rights-based approach can contributed to environmental protection (Lewis, 2012 :37). Environmental activists combine human rights to claim environmental protection in order to make a better world for both animals and humans to live which is a link between the field of human rights and environment (Gearty, 2010:15).

2.2.2 Legal mobilization

The political interest in economic growth to an extent of allowing mining in protect areas has regularly been challenged by civil society organisation engaging in legal mobilisation to claim environmental rights. Legal mobilisation theory has been used to analyze various strategies employed by civil society organizations in a bid to protect environmental rights. According to Handmaker (2019:5), legal mobilisation entails using legal based approaches such public campaigns, advocacy or strategic litigation in the interest of the public to claim human rights. Legal mobilisation lens reveals both how inequalities are perpetuated and how advocacy and other legal based strategies can be effective to deliver environmental, social and economic and all kinds of justice. As a research area, legal mobilisation has two aspects, the first one involves civil society organizations theory accounting for legal-based advocacy more focused on the aim and objectives of the campaigns in many cases formal, judicial interventions. The second aspect concerns justification and management of strategic litigation for public interest (LSA, 2018).

However, as argued by Handmaker (2019), “ in oppressive imperialistic societies, political systems, or even in ostensibly liberal democratic regimes, law and even human rights can be a form of *lawfare*, taking negative, delegitimising, and oppressive forms, justifying retrogressive policies and even reinforcing the hegemonic actions of states.”. When used as lawfare, law becomes a tool to oppress (Handmaker, 2019:10). A typical example of how law is used as lawfare is during the *case of James Nyasulu and 2000 others against Konkola Copper Mine* legal mobilization for environmental rights. Public space for protests was denied by state police citing assembly likely to cause breach of peace which is according to the Public Order Act. When their British lawyers visited Zambia on a fact-finding mission to the affected communities, he was detained by state police and the Public Order Act which prohibits assembly likely to cause breach peace was cited again. The same law could be used to protect

human rights by ensuring a peaceful environment necessary for the realization of the ESCR and at the same time become a state tool to repress citizens (Mukwakwa, 2020:8) .

Therefore, the civil society organisation seek to mobilize law to promote justice. The second aspect of legal mobilisation concerned with the justification and management of strategic litigation which as argued by Handmaker (2019) involves other forms of legal-based advocacy such as protests, 'social mobilization', lobbying, dialogue complimented by litigation as a last resort. Strategic litigation has been called *impact litigation* because it is assumed that even though a case may be lost, the employment of other wide range of law-based strategies can have a huge impact for the community's interest (Handmaker 2019: 7).

Considering challenges with courts of law which are embedded on politics and serve the interest of the government in authority. An example is Zambia which is a neopatrimonial state, the appointment of high court judges is done by the president who deliberately appoint those loyal to the ruling powers and ratified by parliament. Although courts are supposed to operate independently, this independence as claimed by Vondoepp (2005) is dependent on the extent in which political powers control the judiciary (Vondoepp 2005: 281-282). Hence court cases may not be won if they are against political interests and can be frustrating to the actors involved. But because strategic litigation involves other the law-based strategies which complement litigation such that even if they may not win the case, the impact of their efforts bares results in the interest of the public, I wish to argue that the legal mobilisation theory is imperative to the analysis of the civil society organisation legal mobilization.

2.2.3. Civil Society Organizations

Because of them being the voice of the voiceless and advocates for human rights protection, civil society organizations have been referred to titles such as 'collective actions' 'democracy' 'power resistance' 'network' 'civic actors' and 'citizenship'. Their common feature in any society is said to challenge exclusion, inequalities, and injustices. Civil society organizations have also been perceived as social technologies to bring about desired social change (Millward, 2019: 52). Modern debates have now centered on the capitalist's lifestyle injustices instead of lack of material hence (Castells, 2004). Civil society organisation are given names according to their area of specialty and those involved in environmental protection and deep ecology to promote right of nature itself and collectively they act for environmental justice (Gearty, 2010:13).

Because civil society organizations seek to challenge states wish to maximize the available resources for the realization of the 'ESCR' as claimed and businesses violating human rights, they are often perceived as enemies of the state. They do not always have it easy as they are arrested, jailed, disrupted during protests, and beaten even in democratic states. Technical resources such as human, financial and materials are limited and because of nature of the cases even public support lacks (ibid: 13).

Civil society organizations are often blamed for the international legal obligations designed to promote Eurocentric culture everywhere. However, because they are advancing environmental rights and have also broken a new field for advocating social justice, the theory for civil society organisation is important as their challenges and lessons learnt inform recommendations on legal mobilisation strategies in terms of legal reforms and other advocacy based strategies to be employed further to strengthen environmental rights and promote social justice (Donnelly 2008; Higgins 1994).

2.2.4: Application of the theories to the civil societies' legal mobilization

Three theories underpinning the qualitative interviews research complimented each other in analyzing the civil societies organizations legal mobilization. The concept of environmental rights bordering on human livelihoods and survival, non-human living organisms to enjoying unpolluted environment for their survival and their right to life were under threat by allowing the mining activity. This grieved and became a matter of concern to the civil society organizations who are the voice of the voiceless and human rights defenders. The civil society organizations were the main actors who made efforts to undertake the legal mobilisation which is the use of legal based strategies to obtain social change or social justice. Therefore, the theory for environmental rights formed basis of the legal claim. The legal mobilisation theory was used to analyze strategies employed by the civil society organisation which was strategic litigation which involves court case complimented by other law-based strategies. The civil society organization theory conceptualized the experiences of the actors (civil society organizations) who undertook the legal mobilisation through strategic litigation.

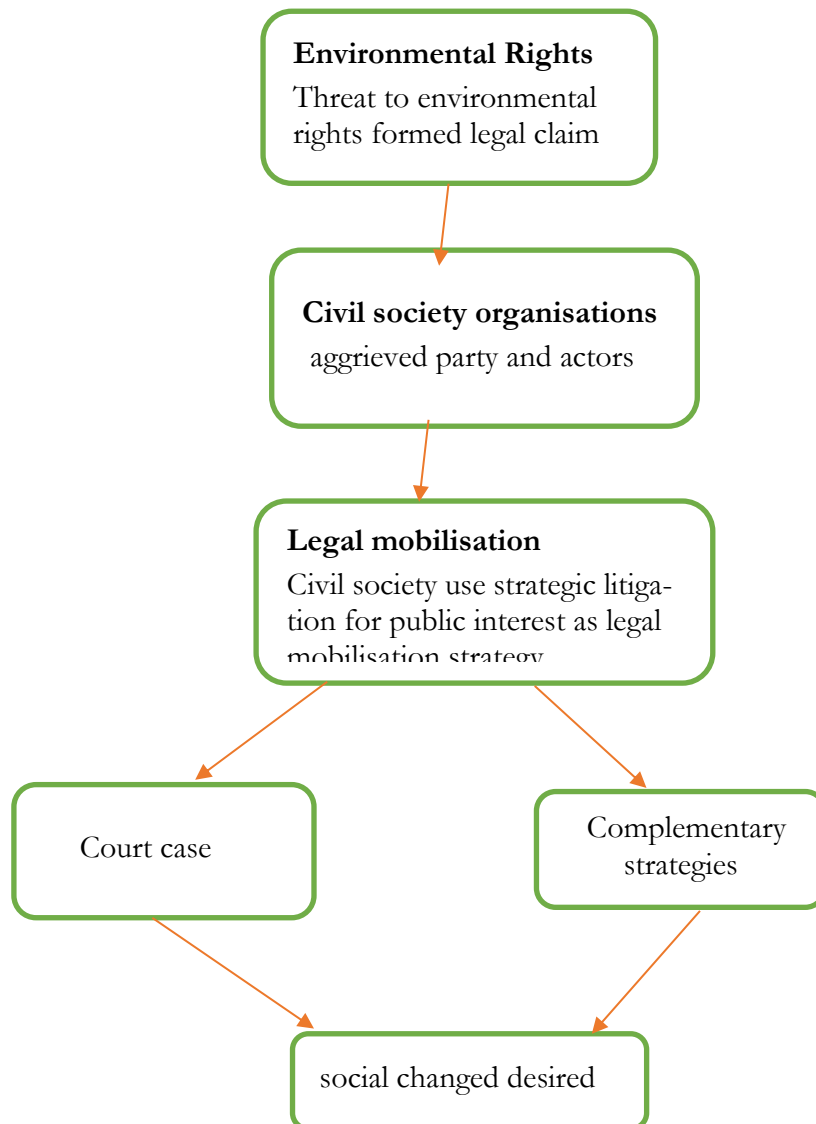


Figure 1 above gives a visual application of the three theories

2.3: Research Methodology

Introduction

The techniques, procedures, strategies, and methods employed during data collection and the analysis are elaborated in this section. The research objectives and questions were established, collecting, and analyzing data required to answer the research question led to the consideration on the appropriate methods of research, procedures and the techniques that would be suitable to successfully research.

2.3.1: Qualitative interviews

The methodological approach employed for the research for in-depth understanding of the legal mobilisation by civil society organizations is qualitative interviews. I chose this methodology because according to O'Leary (2017), qualitative interviews involves inquiring from individuals about their experience, understanding, thoughts, perception, or situation. The interview questions may be formally structured or semi-structured (O'Leary, 2017;442). O'Leary defines Qualitative research as "An approach to research highly reliant on qualitative data (words, images, experiences and observations that are not quantified) Often tied to a set of assumptions related to relativism, social constructionism and subjectivism". Qualitative research tradition therefore, calls for inductive and 'deductive logic, it is subjective, accepts different, point of views and realities, it give strength to research itself than the researcher and participants and political agendas where possible do come out. The social complexities, interactions, procedures, positions, and experiences of individual which gives in-depth understanding of the study are achieved (O'Leary, 2017; 272).

Further, I used this methodology because as argued by Jo Moriarty (2011) 'qualitative methods' can be used for wide range of approached stemming from theoretical background. The mode of collection of data required close interaction with the participant by the researcher to give room for concept that may arise during the interview. As a result, detailed, rich, and extensive information is collected. Due to the in-depth of data collected, the methodology opens for new "concepts and ideas which maybe produced by classifications and descriptions" (Moriarty 2011, 2).

I preferred the methodology as working with qualitative methodologies as O'Leary (2013) puts it entails accepting values, researching for full meaning, conducting research in a 'natural settings', dealing with small numbers without randomly selecting participants , interpretation of idiographic and possibly negotiating the outcome if the researched would want to be aligned with the 'researcher's constructed meanings'. The ultimate goal is to gain understanding of people's experience, cultures, and places through reasonably rich engaging and immersion into the situation under study Key methodologies under qualitative research methodologies include ethnography, case studies which involves studying of social elements comprehensively and analyzing that same situation.(O'Leary, 2014:100)

The qualitative interviews methodology is helped the participants to express their opinions, situation, and experience fully which is important for my research. The use of semi-structured questionnaires allowed for flexibility and accommodating new concepts that image during interviews with the participants (Bampton and Cowton 2002). Qualitative interviews helped with the interpretation of quantitative data, includes the lived experience and meaning, gives possible multiple interpretation and building theories and significantly

important and the participant's 'local meaning', views and experienced are interpreted (Tracy, 2019: 7).

To ensure thoroughness and rigour, the use of techniques included saturation implying ending the collection of data under circumstances when the data adds no richness needed to understand or aiding building of theories, crystallization meaning compiling a rich understanding of divergent views over the same situation seeing the multi-faceted nature of the world that on angel of view and level of illumination (Hennink et al, 2020; 317). For ensuring thoroughness and rigour as O'Leary (2014) also argued, prolonged engagement' giving the research enough time to understand the context, earn trust and good rapport was done (O'Leary (2014, 276).

I verified and confirmed the findings by 'triangulating' which mean the use of more than one single source of information to authenticate and confirm the sources; 'Members checking' to gelling the interpretation of the situations, phenomena and events with the insiders' interpretation; and 'Full explication of method' readers being provided with details of the methodology for auditing and reproduction (O'Leary, 2017; 276).

Therefore, a choice to use this methodology was made because as argued above, the research was dealing with small numbers selected through snowball sampling technique, it allowed interviews to be conducted in a natural setting considering that the case of study was sensitive. Further, the use of semi-structured interview questions allowed room for the participants to give more information which may not have been obtained through close ended questions. The required interaction between the researcher and participants for the methodology gave room for detailed, rich, and extensive information to be collected. Although interaction was limited due to distance, interview appointments created an atmosphere that would allow participants to freely narrate their experiences fully through skype and Zoom Meeting interviews.

2.3.2: Use of research assistant

Travel limitations arising from the novel Corona virus disease COVID-19 necessitated the engagement of a research assistant Joy Mukwakwa. The roles of a research assistant included obtaining contacts for the participants through the first contact identified through social media and explaining what the search was about. The participant's contacts were further sent to the researcher who emailed them the introductory letters from the institution and administered the consent form. Once the participants consent to the interviews, the research assistant travelled to set the platform for interviews through Zoom meetings and Skype for the researcher to interview the participants.

Although engaging a research assistant when conducting qualitative research in challenging situations as experienced during COVID-19 can prove to be helpful. It has been said to have challenges with the interpretation of the findings by the researcher as research assistance go into the field with their own values, belief systems and preconceptions which influence how they perceive things (Turner, 2010: 5). However, to ensure the interpretation was according the researchers' values, beliefs and understanding, the research assistant only facilitated for the interviews by contacting the participants and setting the platform. The analysis of the findings was done through the information collected by the researcher during online video call with the participants.

2.3.3. Sampling technique

The sampling technique used was snowball sampling, a nonrandom technique which is suitable for a purposive research focused on a particular group whose issue could possibly a

matter of relative secrecy or subtle. Sampling error is impossible as insiders are known who help the researcher to locate other participants (Etikan et al, 2016). Nonetheless, it has been argued that since snowball sampling involves small groups of hard to reach participants, result of research maybe imprecise or not a reflection of the experience of the group (Bagheri and Saadati, 2015: 1).

To locate the samples population, the first contact of an opposition political Green Party leader *Peter Sinkamba* who had been identified as part of the activists by the researcher due his online petitioned was obtained through a Facebook mutual friend. After contacting Sinkamba, it was noted he was not part of the litigants as he chose to be in the background to avoid having the issue politicized. Nonetheless, he gave one contact to one of the litigant organizations Chalimbana Rivers Head Water Conservation Trust (CRHWCT) Director *Robert Chimambo* to my research assistant and myself.

With Chimambo's contact, the research assistant managed to have contact to the chairperson for the team who authorized the interview and later led to other participants. Below is a table of the summary of the details of the participants who comprised the research sample and are the litigation team;

S/N	Name of Participant	Gender	Organisation name	Core mandate
1	Robert Chimambo	M	Chalimbana Rivers Head Waters Conservation Trust (CRHWCT)	Zambian origin Catchment Council for Co-management of both surface and underground resources
2	Morgan Katati	M	Zambia Institute of Environmental Management (ZIEM)	A member based civil society organisation committed to the principle of sustainable development through training, promotion environmental justice and governance, advocacy and policy engagement'
3	Emmanuel Mutamba	M	Green Living Movement – Zambia (GLM)	A Finish origin organisation which supports sustainable use of natural resources and community livelihoods in rural Zambia through sustainable agriculture, environmental awareness, capacity building, empowerment and advocacy
4	2 anonymous individuals	F M	Zambia Climate Change Network (ZCCN)	A Network of Civil Society organizations coordinating stakeholder engagement in climate change issues through facilitating capacity building, information sharing, lobbying and advocacy for the benefit of Zambia and the global community

5	Vincent Ziba	M	Community Based Natural Resource Management Forum (CBNRMF)	The organisation whose main mandate is to improve rural livelihoods at the household level through sustainable management of natural resources by communities in Zambia and of priority is wildlife.
6	Henry. H. Ndhlovu	M	Messrs. H.H Ndhlovu & Co	Advocate for the Appellants and expert and environmental law.

Figure 2 above shows the civil society organisation comprising the research sample.

2.3.4. Data collection

The data used for the analysis was both primary and secondary data. Secondary data was mainly used to validate the finding of the primary data.

2.3.4.1 Primary Data collection

Raw data was collected through semi-structured in-depth online interview as it is said the most ideal method of data collection for qualitative research (Adhabi and Anozie, 2017: 7). An introduction letter from the ISS was sent to individual participants organizations or individual email as preferred. Appointments for online interviews following consent by the participants who signed the consent form voluntarily accepting to be interviewed and how the information could be used (Roulston and Choi, 2018: 238).

A research assistant Joy Mukwakwa assisted with scheduling meeting and ensuring the participants (Community Based Natural Resources Forum, Chalimbana Headwaters Trust, Green Living Movement and an individual a David Ngwenyama who were involved in the legal contest) were available online by providing electronic gadgets needed. Confidentiality was assured for participants who chose to remain anonymous and the recording of the interviews were secured kept by the researcher only.

Qualitative interviews were conducted from 5th August to 17th September 2020 with the use of Zoom meetings and Skype video calls which have a provision for recording the proceedings for the interviews. Semi-structured questions were used which allowed for flexibility and for the participant to freely express themselves and give their views. The topic of research is politically sensitive hence method used gave the participants room to choose time when they would comfortably speak and give the perspectives (Cheng, 2016). The recorded videos were downloaded and kept in a folder safely to avoid loss of information in case of internet failure and for transcribing the interviews into a readable form on a word document.

2.3.4.2: Secondary Qualitative Data

Secondary data comprising publications from on articles related to environmental rights, legal mobilization, and civil society organizations and other cases of legal mobilisation for environmental rights in Zambia and at international level were used. The research also focused on the lectures and writings published by the International Institute of Social Studies (ISS) regarding legal mobilisation and environmental rights.

2.3.5. Analysis of findings

To come up with clear findings, thematic analysis was used to identify and pattern from the transcribed data. Thematic analysis is a technique of scrutinizing qualitative data by identifying, analysing and interpreting themes or patterns of meaning (Braun, 2006:1) ⁴The method of analysis is said to be useful when it comes to qualitative data which has varied responses. The analysis was beyond not limited to describing what was mentioned with focus to explain and interpret, but considers underlying ideologies, beliefs, statements and concepts in order to form semantic gist of the data (Maguire and Delahunt, 2017: 3352).

For validity, transparency, having detailed and comprehensive data, the first phase of analysis was done through transcript coding which helped identify themes, assumptions, and ideas by use of deductive and inductive coding. Relevant themes connected to each other were identified which formed the results of the research. Considering the topic of legal mobilisation for environmental rights which takes into account the specific rights being claimed, strategies used and the actors involved, common words analyzed were politics, environment, corruption, business and phrases such as people's livelihoods, lacunas in law where were analyzed in line with themes of the theoretical framework

The analysis comprised three theories, the first environmental rights laid the legal claim which the actors (civil society organizations) were seeking to have change made. The second concept of legal mobilisation lens formed the analytical framework which requires analysis by ensuring that the claim, rights or problem being addressed is clear, taking into account the legal framework used, strategies employed, challenges faced and lessons learnt. The final concept of civil society organizations was that actor who mobilized law to claim environmental rights. Therefore, the three concepts complimented each other to shape the analytical framework help present and analyze the findings.

Figure 2 below illustrate the thematic analysis and coding.

Thematic area	Words coded	Phrases coded	Theory
Environment	Pollution, blasting, incompatible, biodiversity, animals, displacement	Climate change, local community, international agreements, discharge area,	Environmental rights
Strategies used	Litigation, protest, advocacy, lobbying, sensitization, collaboration	Social mobilization, social media,	Legal mobilization
Capacity limitation	Corruption, brutality, politics, interference, lacunas	Lack of public space, sensitive issue.	Civil society organizations.

Figure 3 the thematic analysis coding

2.3.6: The dilemma of positionality, reflexivity, and ethic

Due consideration on positionality and the reflexivity during research involving legal mobilisation for environmental rights which is highly political and is against capitalists' businesses ought to be given. The term positionality refers "to the issue of relation of power that exists in the relationship between the researcher and the research Participants. Foucault posits that "power operates in the processing of information" into knowledge/ 'fact' and therefore sees knowledge as power" (Mills 2003:72). According to Wumbla, (2018) unlike the positivist's

perception, the researcher's traditional and historical situatedness have potential to influence her phenomena understanding making it almost difficult to remove entirely prejudice traces from the process construction knowledge. The researcher's positionality influences how she understands the research topic without which the data collected would be meaningless and not interpreted (Wumbla, 2018: 22)

Therefore, social sciences researchers are required to consent the reality that their viewpoint subjects them. Hearing, seeing, and appreciating numerous viewpoints or experiences is required to ensure rigorous research since the researcher's temperament influences what she perceives and how she translates it (O'Leary 2013:50-51). While it is necessary to reflect on the individual's ability to influence the process of research, it is a difficult task to write on the "tensions, anxiety surrounding reflexivity, positionality, and situated knowledge" and seeking positionality (Hennink et al, 2011: 19; Rose, 1997).

To argue for positionality and situatedness of knowledge, I acknowledged that power relations can influence the knowledge production process" (Wumbla, 2018: 22). Having a background study in Environmental Health which gave me both academic and professional experience how mining activity by capitalists is a major source of chemical pollution in Zambia causing harm to both plant as well as animal and my exposure to international institutional learning have influenced how I perceive foreign direct investment.

I therefore present how I gathered the information and presented the findings. I ensured to interact with my participants in a respectful and dignified way with confidentiality and anonymity where necessary. Considering the sensitivity of the matter, the litigant devised a channel of communication with outsiders to avoid jeopardizing their case. All communications were first through the chairperson for the group. I emailed my introductory letter to individual NGOs from the International Institute of Social Studies as evidence that I was a student, and the research was purely for academic purpose as part of the fulfillment for my master study. My research assistant name was appearing in my introductory letter which made it easy for her to access contacts and schedule Zoom and Skype meetings with my participants.

To appreciate their sacrifice and sparing their time to have online interviews with me, my research assistant compensated those who used their own equipment and data bundles to hold interviews with me while she travelled and made access to internet and power through power bank to those who did not have based in Rufunsa the rural part in the Low Zambezi National Park.

Considerations were made on particular ethical matters especially that an appeal was made through the supreme court against the 29th October ruling for the mining to go ahead. Discussing issues in court is contempt of court, hence strict confidentiality was assured to the participants. My occupation of being a civil servant in the Zambian government under local authorities also made my research sensitive as it would be against my employers. This gave the participants confidence to speak free about their legal mobilization. The interviews were mainly between me and my participants, my research assistant's work was only to facilitate for the interviews, but contents were only known by my participants and myself.

The participants had my assurance that the final research report will be a reflection of the legal mobilisation experiences, strategies they used, challenges they encountered and recommendations on what needed to be done to protect the environment in Zambia. Since the topic was sensitive, I assured them the final documents was going to be used for academic purpose for knowledge update in the field of legal mobilisation and once the court case is disposed, it would be made available to civil society organizations and environmental experts to learn and understand strategies used during legal mobilisation and legal reforms to strengthen environmental governance and protection.

2.3.7.: Experience and limitations during online qualitative interviews

Most civil society organizations do not have well developed websites with accurate information of their work contact numbers and email addresses (Friedrich-Ebert-Stiftung, 2019). As a result, most coordinators use their personal mobile numbers and email addresses. As mentioned in the sampling technique, the first contact was obtained through social media Facebook and later managed to get the contact for the team chairperson. This was after efforts to interview participants without first communicating with the chairperson had failed as they kept referring me to the team leader. This helped understand that managing legal mobilisation for groups requires that there be one voice.

The team chairperson was unresponsive for some time due to connectivity issues but once my research assistant was in touch with him, I communicated with him requesting for authorization for other organizations' participants to accept to be interviewed as my interest was purely academic which he did. From then other organizations became free to respond and I had to present my letter to them for their records. Having understood the sensitivity of the matter, I patiently and consistently pursued the participants until the interviews were conducted with all civil society organizations including their advocate. The individual expert who was part of the litigant team could not consent as he was no longer part of the team due to some conflicting ideas and actions he made and the rest of the team members were not happy with him. This informed me to be a challenge that social movements face when managing strategic litigation as a group.

While people are punctual when reporting for work in Zambia, but there is no culture of making appointments and strictly following the schedule when working. Sometimes meetings are called for promptly making workers unavailable for work and planned schedule for work (Communicaid, 2019). Some participants could not stick to the interview appointments as they would be in meetings they were promptly invited. At times during the appointed they would still be busy with other activities and I would have to wait for long hours worse still reschedule to another date. I also encountered poor network connectivity due to poor network services by the providers. Calls would cut or hang on several times and kept reconnecting.

Due to the sensitivity on the case, it took a lot of effort from myself and research assistant for some participants to agree to be interviewed. The coordinator for CBNRMF could not consent I opted for the former coordinator who was the key litigant and had more information to my advantage. During the interview, some participants were still not comfortable to give details information as they could only give overarching statements despite the assurance of confidentiality and anonymity. However, having different participants helped to still gather information in depth.

Chapter 3 | Analyzing the Environmental rights of concern.

3.1: Introduction

To discuss the findings from the qualitative interviews, environmental right concept is used to analyze the findings for this chapter. According to Gearty (2010), environmental rights refer to individuals' livelihoods, their existence, and health that need access a healthy surrounding and include biodiversity right for non-human lives to enjoy unspoiled environment. Environment is embedded in politics; hence I will also analyze how politics are involved in the management of environment (FEI, 2020; Gearty 2010:14).

3.2: Environmental rights and legal claims.

The Environmental Management Act (EMA) N0. 12 of 2011 requires that projects with potential effects on the environment conduct an environmental impact assessment which is a systematic assessment to evaluate if or not the project or an activity will have any adverse impacts on the environment (EMA, 2011:32). This is also in accordance with the principle 17 of the Rio declaration which calls for undertaking an EIA for 'proposed activities that are likely to have a significant adverse impact on the environment' (Gamage and Boyle, 2008: 2).

After acquiring a mining license, the Australian company contracted Geoquest to conduct an EIA as per requirement. Article 91, 92 93 and 94 of the EMA empowers the public with the right to participate in environmental regulations and policy formulation and decisions. Hence, following the issuance of a mining license to Mwembeshi Resource Limited a company originally from Australia by the Ministry of Mines. The civil society organizations working in the area of sustainable environmental management and conservation tabulated in the sampling technique section became interested in the matter and prepared themselves to participate during public hearing and made submissions on their grievances and environmental rights under threat by the mining project.

3.2.1: Chalimbana Rivers Head Waters Conservation Trust (CRHWCT)

During the interviews, Chimambo cited how Article 17 of the Water Resource Management Act (WRMA) No. 21 of 2011 gives rights to citizens to co-manage water resources through catchment councils, sub catchment councils and water user associations through writing to the minister. Chapter 10 of the Southern Africa Development Community (SADC) Protocol calls for community participation in the management of water resources (Regional Water Strategy, 2010). A civil society organisation CRHWCT) formed by Chimambo the Managing Director actively co-managing both surface and underground water resources together with the government authorities, whose catchment area include the proposed mining area made submissions objecting the project. The first reason was that Section 22 (4) (j) of the Town and Country Planning Act Chapter 283 of the Laws of Zambia prohibits carrying out development projects in protected areas such as forest reserves and games reserves. These areas were strategically created for the purpose of balancing the ecosystem for the benefit of Zambians.

Chimambo cited an example of forest 27 which was degazetted and development works were now going on. He alluded that the said forest was a recharge for underground water and because of it being disturbed boreholes were now drying including at his farm denying

citizens the right to water which is a fundamental human right. According to the 28 July 2010 resolution 64/292, 'the United Nations General Assembly explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realization of all human rights' (UN General Assembly, 2010). The Lower Zambezi National Park has many recharge areas which is why it was protected apart from being a habitat of animals. Huge projects like mining would definitely affect the under-ground water system and deprive Zambians the right to water. An example was how community boreholes were running dry in Lumwana due to the mining activities.

Chimambo further mentioned how the Chalimbana river was becoming polluted due to sewage waste from the barracks, Choongwe River too was polluted with heavy metal discharges from the industrial areas in Lusaka. As an organization, they were devising strategies to reduce pollution in these rivers to reduce harmful effects to communities using the rivers for their livelihoods. These rivers discharge into the Zambezi River. The proposed area for mining does not have copper deposits only, but also gold and uranium with mining processes that discharge more toxic wastes into the water. Already there are traces of uranium in the Zambezi river from Lumwana mine which is very far away. Allowing large scale mining activities without proper pollution mitigations indicated in the EIA would worsen the situation and risk many lives (Pettersen et al, 2014). Based on the huge potential for the project to pollute surface water and affect underground water, CHWCT rejected the project as it would violate environmental rights.

3.2.2: Zambia Institute of Environmental Management (ZIEM)

A member based civil society organisation ZIEM 'committed to the principle of sustainable development through training, promotion environmental justice and governance, advocacy and policy engagement' had its director the chairperson of the litigation team. While conducting the interviews, Katati the Director stated how the organisation took part in the formulation of the EMA No. 21 of 2021 deliberately gave power to the public to make submission and participate in decision making bordering environmental governance. They too utilized the opportunity to participate during the hearings.

Being an organisation that looks at the environment in general they were concerned with all components of the environment including wildlife. During the public hearing, they cited the 1997 Wildlife Act Section 16 (2) which prohibits mining in the national parks. The EIA indicated that they would use green technologies to avoid adverse effects to the environment, but there were no clear technologies mentioned in the same EIA except the claimed that they would use the Chambeshi smelter on the Copperbelt Province which is more 500km away. That implied good road network would be needed and there was going to be high traffic of trucks which is incompatible with the biodiversity. The provision of road network meant reducing the national park by more than 50%. Animals reproduce and instead of reducing the size of the national park, there was need to expand. He further narrated:

Mining activities involve blasting resulting to loud noise and tremors, that would scare animals and cause a chaotic situation in the area. Animals like elephants are very sensitive and would not live in such an environment. The same proposed mine was going to be an open pit, Imagine animal living in an area with big holes.

According to the geological survey carried out, the area was said to be fragile, mining would increase vulnerability to land movements capable of destroying the wildlife and communities around. Other side of the Zambezi River on the Zimbabwean side, there is the Mana Pool National Park a UNESCO World Heritage Site (UNESCO, 2014) with the same ecology.

¹ Interviews with Chimambo of CRHWCT conducted 16th August 2020

Therefore, based on the above legal claims, the organisation too objected to the mining project as it would violate environmental rights.

3.2.3: Green Living Movement Legal Claim

The organisation main interest in the environment and safeguarding the existing tourism industry which is economically viable. The participant argued that the Lower Zambezi National Park was set to protect wildlife and to balance ecosystem. Mining processes produces tailing as effluent laden with chemicals that would pollute the rivers which is support livelihoods for communities downstream. Besides mining is biodiversity incompatible there was no way animals were going to be living side by side with bull dozers.

A researcher was engaged to do a comparative economic benefits analysis for both industries mining and tourism. It was found out that the mining would give high short term benefits through revenue to the government but its negative consequences on the environment would be a long time such that reversing such will all the revenue generated would be eroded. The cost of reclaiming would be higher than the revenue generated. He emphasized that mining provides short time benefit, and tourism and conservation provides lifetime benefits not only for our generation but generations to come.

Green living movement challenged the EIA claim that extraction was going to provide employment for the local people. The local people were peasant farmers without technical qualifications needed for the mining, the only employment they would qualify for was cleaning jobs which was lowly paid in Zambia and at the end of their employment they would be in poverty.

The claim for usage of technology with minimum disturbance to the environment was not valid. Also, the issue of transporting raw copper to the smelters on the Copperbelt need good wider roads for high traffic calling for massive deforestation. That means animals' habitat shall be lost and they cannot be in an area that has traffic of huge trucks moving every day. For the above reasons, Green Living Movement too opposed the proposed mining project.²

3.2.4: Zambia Climate Change Network

The Zambia Climate Change Network (ZCCN) objected the proposed mining project because according to them, it would deprive the local communities their economic, social, and cultural rights. Their concern is environmental justice which cuts across animals, forest, and livelihoods. The expanse of the extractive venture requires displacement of some community members by removing them from their houses and farmlands thereby disrupting their farming activities. The area has many streams tributaries of big rivers following into the Zambezi which support local people with gardening and fishing, but once the mining activities commence these streams will be heavily polluted to support the economic activities currently taking place. There is a coordinated program by CBNRM that allows communities to hunt to benefit from the wildlife in their area, with mining such privileges will no longer be there.

They two participants further said the LZNP ecology is critical for balancing climatic conditions in the country. The country has experienced drought, and the rainfall pattern has changed threatening food security. Zambia is a state party to the May 9, 1992 United Nations Framework Convention on Climate Change obliging nations to reduce ambient emission of greenhouse gases causing increase in average global temperature risking drought and

² GLM interviews conducted on 17th August 2020

desertification. Mining causes huge emission of greenhouse gases when coupled with ecological destruction, that will be catastrophic to our people.³

3.2.5: Community Based Natural Resource Management Forum

The organisation whose main mandate is to promote community participation in the conservation of natural resources and of priority is wildlife. CBNRMF is also advocate for benefit sharing mechanism that provide community benefit from the resources hence forth encouraging conservation. The organisation made submissions objecting the project because they were directly managing the wildlife in the area. As conservation institution they promote improved livelihoods through natural resource preservation. About 800 people were employed by the time the EIA was being heard. *Vicent Ziba* the former coordinator who was the first participant for the litigation stressed out:

The CBNRMF is taking the LZNP as a case for improving community participation in the management of wildlife. A mechanism has been devised for communities' benefit through employment creation as village scouts, tour guides and hotel staffs for lodges in the area. The community resource boards were created to facilitate coordinated sharing of wildlife proceeds. Each board is given hunting quarters and can decide to sell game within the local communities or to any investor. Before the LZNP was not heavily hunted but it is now receiving hunting quarters intended to improve livelihoods and so far, there is improvement in resource management. Such a project would be disturbed if mining is allowed.

The claim that mine would create employment for the local resident cannot be substantiated. They will bring high-tech labor from abroad and urban areas, such movements disturb the landscape....the of number Zambians to be employed would be low especially for the local people. If it is looked at from the income earning especially in a long term, the wildlife conservation is more sustainable, it is providing more local jobs and contributing to the GDP. Although not as the mine could provide GDP but mining is an industry that has a short life span of which this was projected for only 25 years then close.

The participant further said considering how the LZNP had improved, maintaining wildlife was more sustainable, environmentally friendly, contributing income to the local communities and national treasury through taxes from the tourism sector, and can do more if the models were improved.

On the proposal of new mining technology, which is environmentally friendly the respondent argued that:

The investors were saying it is green mining, but there was not any green mining, it only exist on paper, you cannot be blasting the mineral in area where there are animals.

The CBNRMF was concerned of displacement of local communities enjoying the environmental benefits. Although majority were living in poverty, organizations in Wildlife World Fund were in the area empowering communities with skills and projects to improve their livelihood. Displacing them was going to make them worse off, an example was how local people in the Northwestern province were promised jobs and allowed mining but today most of the are living in abject poverty next to the mineral wealth. The capitalist investors are only interested in profit and not people's welfare.⁴

³ Interviews conducted on 5th August 2020.

⁴ Interviews done on the 24th August and 2nd September 2020

3.2.6. Litigant advocate Messrs. H.H Ndhlovu and Company.

The advocate for the litigant team expressed how being a lawyer interested in environmental matters he had witnessed many cases where environmental matters are disregarded. During the interview he mentioned how the developers go to the communities and promise to take development without giving fact on the environmental consequences of the project. there was no way an open pit could exist side by side with the forests. If mining were allowed, the environment would be polluted and animals which cross to and from Zimbabwe into Zambia would be affected. The project was said to be antagonistic to environmental conservation values. Mining renders the land unreclaimable, places where emeralds have been mined there are pits which are left, and nothing can be done with the land again.

The advocate said he challenged the defendants where else in the world they had seen an open pit mine in the national park alongside animals. In response, the defendants gave an example of a mine in South Africa which they claimed was in the national park. An individual was sent for a fact-finding mission and it turned out that the mine was several kilometers away from the perimeters of the national park to have any effect.⁵

3.3. Decision by Zambia Environmental Management Authority (ZEMA)

As an institution of environmental expert and an authority that incorporate public views when deciding on project of significant environmental impact, after public hearings and studying the EIA, ZEMA handed down a decision letter objecting the mining undertaking in the LZNP. In the decision letter, reasons cited for the objection were as follows; the tailing storage facility would be situated right in the Zambezi escarpment an area vulnerable to earthquakes which was risky with high chances of failure. The impact of the failure would affect the neighboring countries which was undesirable; an international property which is the Mana Pools World Heritage Site is located only 30km away from the intended mining area on the other side of river in Zimbabwe. Any TSF failure or excess discharge of effluent would negatively affect the international heritage site.

ZEMA further cite other reasons such as acid rain drain (ARD), the environmental impact statement (EIS) only indicated that the level 112m to 116m contained substance likely to generate acid without providing mitigation measures for both short term and in the long run. The issue of metal leaching too was not addressed. Metal leaching and ARD impact would be significant during the mining life and even more when it is closed. Considering the nature of the project - an open pit mine, the proposed site was not suitable as it located in the middle of a national park. This would adversely impact and permanently damage the landscape of the national park thereby reducing other economic activities around it such as tourism. The Lower Zambezi National Park is one of the four major national parks according to the ZAWA which earns the country a lot of money. Besides, construction of powerlines and roads needed for the mine would further compromise the integrity of the national park as its ecological value would be affected. Finally, lack of clear benefits and lifespan for the mine, information about the line life span of the mine was contradictory in the EIS and differed with the one from the verifiable facts. The would-be benefits were not worth the lifespan and yet the environmental damage could be permanent and beyond imagination.

⁵ Interviews with advocates conducted on the 17th September 2020

3.4: Ministers overturn ZEMA decision

Article 116 (1) of the EMA No. 12 of 2011 provides for an individual aggrieved by the verdict of the Agency (ZEMA) to appeal through the line Minister within a period of thirty days of the verdict. Article 115 (1), (2) and (3) gives a mandate for the minister to receive an appeal for review in accordance with the EMA. Mwembeshi Resource Limited utilized the legal provision and petitioned the Agency's decision. According to the CBNRMF former coordinator, the Minister Simusamba then did not act on the appeal as he was perceived to be against the mining.

Ziba narrated how after some time of no action, the incumbent president then *Michael Chilufya Sata* made appointment changes and brought Harry Kalaba who was a minister of Foreign Affairs to be Minister of Lands and Natural Resources replacing Simusamba who could not act. Once Kalaba was appointed, he quickly overturned the ZEMA decision giving a go ahead for mining claiming that the government was in haste to create employment. Within one week he who moved from Ministry of Lands and Natural Resources and back to Ministry of Foreign Affairs. The decision to disregard ZEMA decision perplexed the civil society organizations. The manner with which appointments were swiftly made them realize that the decision for the mining project to go ahead was an entire cabinet decision.

The participants lamented how the same law empowered the citizens to decide on environmental governance but at the same time their decision can be overturned by an individual minister. Even though the minister is mandated to receive an appeal, his decision must be in harmony with the environmental policies provided in the EMA and not employment reason claimed.

3.5: Critical analysis

Following the arguments by all the civil society organizations, the LZNP seemed to have been be strategically created to serve for as habitation of non- human living beings while directly and indirectly benefits humans. The civil society organisation which they gave examples of environmental degradations in other mining towns which have rendered the land unreclaimable like in Chingola and communities remained poor, suggested that mining projects in Zambia do not improve livelihoods instead rendered the poor in rural areas more poorer. (Sambo: 2019: 5).

While the government is interested in GDP growth, the actual benefits from mining are short-lived while the negative environmental consequences are permanent or long term as alleged in the case of Kabwe town where the municipality is grappling with lead poisoning many year after the closure of the mine, mining in the LZNP was not a decision in public interest. Further, an example of forest 27 by CRHWCT indicated that politicians in Zambia just like business are interested in wealth accumulation at the expense of environmental protection. In such a situation, I wish to claim that access to environmental resources would violate environmental rights as the poorer would be made more poor and non-human housed in the national park would have their rights violated.

The provision for the minister to be the final authority after public input suggest a typical case of lawfare where the law is used to oppress (Handmaker, 2019: 10), As claimed by Vanderheiden (2017) that violation of environmental rights in the Third World countries are done by corporation from developed countries due to coloniality in the law of capitalism. While they make hefty profits for their countries, they live behind unreclaimable land and many lives languishing on poverty.

Chapter 4 | Legal Mobilisation by the civil society organizations

4.1.: Introduction

In this chapter, using legal mobilisation lens, I present the findings and analyze the interaction with law as legal mobilisation and lawfare. This has been done analyzing the laws framed, institutions started to have the change desired, and other strategies employed.

4.2: The civil society strategic litigation.

Although the EMA gives the minister powers to review the Agency's decision, Article 116 (2) of the same Act allows citizens not pleased to challenge the decision and it stipulates:

A person aggrieved with the decision of the Minister may appeal to the High Court within thirty days of the decision

Being grieved with the minister's decision, the civil society organizations decided to engage into strategic litigation (complements other ways of bringing about change; from lobbying and advocacy to community organizing and protest) to ensure that the minister decision was reversed (Handmaker 2017: 4). From information obtained during interviews, to coordinate well, Katati the Director ZIEM was selected to be the chairperson for coordination purposes while Ziba the CBNRMF Coordinator 1st Appellant or key litigant. Other civil society organizations and an individual *David Ngwenyama* formed part of appellants. Law based strategies alluded below were devised and employed at different stages during a period of 4 years. The interview revealed the following strategies were employed;

4.2.1: Litigation

During interview sessions, the participants said their first step was to file an injunction before the lapse of 30 days as provided by the EMA through the Lusaka High Court against commencement of the extraction in the LZNP. Judge *Isaac Chali* assigned to their matter requested them to state grounds under which they were appealing against the minister's decision to stay the matter. The appellants presented four documents forming basis of their appeal in their affidavit annex I. The first document annex II was an objection letter for the project to ZEMA and reasons for the objection, the second policy advisory note (could not be made available), third annex III minutes of the meeting for public hearing and forth copy of letter for ZEMA's decision to reject the project annex I. Based on the evidence presented, judge Chali decided to stay the minister's decision of allowing the mining project pending court hearing.

According document of the appeal before the Lusaka High Court annex IV, the appellants' advocate Ndhlovu made a decision to target the minister of Land and Natural Resources as first participants who authorized the mining, in this case Attorney General and the mining company Mwembeshi Resources Limited being second participant. To build a strong case, the advocate focused on the following: first breach of ministerial code of conduct, according to the Zambia penal code, a minister must conduct herself/himself make decisions in accordance with the expert advice and for the interest of the public. In this case, the minister disregarded the professional advise by ZEMA and did not act for interests of the majority by allowing mining without considering other constitutional provisions and certain matters in tandem to the advice given by the technocrats. Section 115 (2) (b) of the EMA ("shall have regard to relevant environment policies, guidelines and standards published by

the Agency”) requires the minister to review the appeal according to the environmental policy and not employment opportunities as he reviewed. About penal code and EMA provision the litigants wanted the court to determine if the minister abused his authority, so that if he did his decision could be reversed by the court

Secondly issue presented was the National Park Act of 1999 requires that anyone who enters the national park for any form of investment obtains authority through writing from the Director of Zambia Wildlife Authority (ZAWA) which was not done. They were hence challenging the minister and investors which authority they were using to enter the national park. Finally, the advocate contended that the proposed project was in direct conflict with Zambia’s international and regional obligations regulations concerning protection of World Heritage Sites and shared water courses systems. First UNESCO declared Mana Pools in Zimbabwe as a biodiversity reserve and it shares the same ecology with the LZNP. The animals move to and from both sides cross the Zambezi river. Hence, allowing would be contradictory to the principle of collective conservation of shared wildlife resources. The LZNP is part of the Trans-Frontier Conservation Area (TFCA) together with the Mana Pools World Heritage Site and Cobora Bassa in Mozambique. An integrated development plan for countries involved is a prerequisite of the TFCA therefore, the anticipated mining activity would compromise the development of the TFCA for the three countries.

Further, the proposed project was going to lead significant alteration of the local hydrological system impoundment of season stream, changing the seasonality of streams and water budget, increased soil erosion, siltation and destruction of ephemeral wetlands and plants thereby affecting weather patterns and environmental conditions. Extraction would likely cause large scale pollution of ephemeral wetlands, pans, surface (local streams) and ground water pollution including the Zambezi river which is an international river conflicting the SADC protocol on Shared Water Courses to which Zambia is a state party.

Pumping of ground water which is obvious during mining process would affect the water budget thereby affecting depriving communities who depend on ground water access to drinking water which is their right.

4.2.1.1 Court decision

According to the Ziba’s recounting, the key litigant then, after court battles and before the final opinion could be made, judge Chali who was presiding over the matter was transferred from Lusaka High Court to Ndola High. While still waiting for the verdict, Judge Chali passed away in a mysterious way. From 18th February 2014 when the appeal was made, the judgement was only made on the 29th October 2019, with the new judge assigned. The judge is said to have only called a selected individual and in the absence of their advocate, the case was thrown away. Ziba lamented how no consideration were made on their submission or follow up on where judge Chali had left. The participants suspected corruption of the High Court Judge and politics to have influenced the new judge’s decision. They suspected the death of judge Chali to have been political as well. Being grieved with the High Court ruling, the litigants appealed before the Zambia’s Supreme Court and at the time of interview, the matter was still in court.

A similar case of legal mobilisation for environmental rights is that of James Nyansulu and 2001 others of Chingola municipality against KCM mine. Nyansulu the lead litigants claimed to have had his life threaten, warned against challenging businesses who have links to the judiciary, and him too claimed to have evidence of corruption by the Zambia’s Supreme Court. As a result, their cases ended up being appealed before the British Supreme Court where the parent company for KCM Vandeta Plc hails from (Mukwakwa, 2020:7).

4.2.2 social mobilization

The litigants realized majority community members were not aware of what was about to take place in their area. According to the participants from Zambia Climate Change Network who chose to remain anonymous, the politicians and investors engaged the traditional leadership to give consent to the project without involving community members in general. The unnamed participant related:

Unlike previously, traditional leaders are now on governmental payroll with personal to holder vehicles provided by the government and there is no way they can go against government decisions..... no one can bite the finger that feeds you. Once politicians talk to chiefs and agree they will go to the media and say people want the project and yet local people are aware of what is about to happen. The EIA stated that there were no settlers in the mining area and no community members would be affected but contradicted itself by indicating that some people would be displaced. Among few people who are aware, some are excited about job yet the number of job to be created is 300. There is need to close the information gap.

The Zambia Climate Change Network went on the ground sensitizing the local people on the project and how it would impact their lives for them to make informed decisions based on the reality. It was further noted that majority community members were not aware of their constitutional right to make decision on environmental governance, hence educating them on the importance of actively participate. Statutory Instrument No. 28 Of 1997 of the EIA regulations states 'If, following the preparation of a project brief or environmental impact assessment, an authorization license, permit or permission has been issued but no land preparation or construction work has started within three years, then the developer must re-register with the authorizing agency any intention to develop'. The current EIA for the year 2012 had expired in 2015 during legal battles, another EIA process will begin, and sensitization was being done rigorously to raise awareness for the community members to stand up for their rights.

Among other targets for social mobilisation were student from the University of Zambia who were invited to witness the hearing in court. Nonetheless, the students' present made the high court angry accusing the litigants of inciting students to cause confusion.

4.2.3: Advocacy

The litigant team during interviews claimed to have used advocacy as another strategy, the visited line ministries like Ministry of Tourism and Ministry of Fisheries and Livestock persuading them to make their stance against mining and promote environmental rights. It was during when they visited the Ministry of Tourism requesting for detailed documents that they realized the decision for mining was a cabinet decision. Officers who attended to them and availed information were disciplined. The team also went to the chiefs in the surrounding chiefdoms giving them details of the implication of mining and lobbying them to defend their subjects and protect the environment.

As key litigant, the CBNRMF Coordinator said he report the matter to the parliamentary select committee which preside of environmental matters comprising members of parliament from the ruling party and the opposition parties. The parliamentary committee parliamentarians visited the site after which they advised the government not to allow mining in the LZNP. The parliamentary select committee cannot make binding decisions but can only advise, which they did. However, the advice the parliamentary select committee was not hid and the minister decision could not be reversed.

4.2.4: Engaging the International Non-Governmental Organizations (INGOs).

According to the interview with the Chimambo, the plaintiffs having learned that the mining company was from Australia where issues of environmental management was very strict and how mining in the national parks was not allowed, they decided to engage the INGOs namely Action Aid and OXFAM Australia to investigate what type on investors they were and their credibility. Chimambo Director of Chalimbana Head Water Conservation Trust said in the letter they mentioned the irregularities in obtaining the mining license from Ministry of Mines by the company before conducting an EIA as required by the Mines and Minerals Act Cap 213 Section 24 (4) of the laws of Zambia the process they perceived as a root of corruption, and how the project was environmentally sensitive. The INGOs exposed the company in Australia as a result it lost its shares in the Western Australia Stock Exchange Market amounting to \$300,000 forcing the owners to sell their company to a Dubai based company.

Chimambo stressed how they were in the process of writing to INGOs and local civil society organizations in Zimbabwe and Mozambique so that they too can begin putting pressure on the Zambian government. He alluded that the project would cause a lot of pollution in the Zambezi River falling in the category of shared waters according to the SADC protocol. Whatever is going to happen in Zambia would affect them, hence they needed to join hands and protect environmental rights.

4.2.5: Using public media and requesting people to sign the petition.

Radio stations, private television stations were used to communicate to raise awareness to the general populace in all parts of Zambia. Social media like Facebook and Twitter were used to circulate the Lusaka High Court judgment to lift the injunction and allow mining on the 29th October 2019. The matter became political such that the president was forced to issue a state that he was going to cancel the mining license said Vincent Ziba. People worldwide became aware of the issue and were talking about it. An online petition was initiated, and people globally signed against mining which is how I became aware of the issue.

4.2.6: Public protest

During the Interview with Chimambo, he mentioned that Zambia is member state to the ICCPR; hence the civil society utilized their rights to protest when the Australian Minister of Mine visited Zambia on a business tour about mining. The litigants went and stood across the road with placards challenging the minister why a mining company from his country was coming to destroy the environment and livelihood in Zambia which they cannot do in their country. However, the protest was short-lived as the police was quickly called for them and they were detained for some hours.

4.3: Critical analysis

As argued by Handmaker (2019: 6), the civil society organisations object of legal mobilisation was the state who allowed for the mining and the mining company which intended to mine and violate human rights. While the court granted stay which was positive on their side, the employment of different strategies to compliment the court case such as identifying INGOs in Australia to help stop the company from its parent state could imply that legal mobilisation for environmental rights in weak states like Zambia involves using international institutions. An example is the case of Nyunsulu and 2001 others, who could not obtain justice in the courts of Zambia and ended up appealing their case through the British Supreme Court

where Vendata plc the parent company for the mining firm which was violating their environmental rights hail from (Mukwakwa, 2020 9).

Although the judiciary is said to be 'independent', the transfer of presiding judge Chali and appointment of another judge who presided without considering where his colleague had left could imply political involvement in courts which seeking environmental justice through courts of law in Zambia may not be attained. Politicians simply use their influence to change the administration of court as appointing authority and put judges inclined to their political agenda to judge in their favor (Vondoepp, 2005: 280-281)

The demise of judge Chali under unclear circumstances as alleged and short lived protest by the civil society organizations who were detained by state police, threatened lives as alleged confirmed what Gearty (2010) claimed that environmental movements suffer harassment, death threats, being jailed. Therefore, legal mobilisation for environmental rights is a risky undertaking as it stands on the way of politicians and capitalism who are preoccupied with economic gain and profit at the expense of the environment

Strategic litigation compliment other ways of bringing change and as claimed by Handmaker, the focus may not be winning the court case but as other strategies are used, the goal will be achieved in the interested of the public which is why is it called impact litigation (Handmaker, 2019:7) . Although the litigants lost their initial court case , public awareness of what was going on was raised and the incumbent president although corrupt as alleged during the interview gave a statements that he was going to listen to what people would say according the national broadcasting channel ZNBC (Kaumba, 2019). Although politician words do not often match the actions.

Chapter 5 | Capacity limitation experienced to challenge states and corporation

5.1. Introduction

In this chapter 5, I present the capacity limitation faced by the civil society organizations. As Handmaker (2019: 13) argued, civil society organizations sometime tend to have limited capacity to hold governments, individuals, and business accountable to their human rights obligations by way of legal mobilization. The capacity gap such as legal framework structurally biased to when in come to natural resources. Although the complainants so far have managed to stop the mining activity through strategic litigations, they have been faced with various challenges in the application of law stated below:

5.2.: Lack of Resources both financial and technical resources

All participants bemoaned of having struggled to raise legal fees and by interview time they were still owing the legal team. At first many NGOs and corporations were willing to pay legal fees but when they realized it was a government decision they withdrew as they did not want to be labeled to be against the government especially government aligned NGOs from Global North. Worldwide Fund for Nature and the Lower Zambezi Development Association (an organisation comprising of companies offering tourism services in the LZNP) had even committed themselves but retracted.

Lack of resource was partially attributed to be the reason somehow social mobilisation was a challenge. Community members would be given something when dealing with the prospective investors while the civil society organisation had nothing to ever save for the message of good will.

Finding a lawyer who is an expert in environmental law was another challenge. At first, they identified someone who was an environmental expert in academia. Later on, they came across Ndhlovu a judge interested in environmental law.

5.3: Brutality by the state

Although Zambia is a state party to the UNCCPR, press freedom, freedom of assembly, freedom of speech is increasingly becoming a challenge under the current Patriotic Front regime. According to Robert Chimambo of Chalimbana Head Water Conservation Trust, anyone who speak against the government is accused to belong to opposition and they are either arrested or have their organisation closed, people do not have space to express themselves. The litigant team themselves were apprehended by police when they staged a protest during Australia's ministry of Mines visit. Ziba said apart from police brutality and lack of public space, they had their lives threatened which made them careful how they shared information and moved.

5.4.: Rift in law application

Application of laws was marred with challenges such as;

5.4.1: Lacunas in the law

All the participants interviewed lamented how the EMA was enabling by proving for citizens to participate in decision making on the governance of natural resources and at the same

empowered a single minister to make a ruling in his own capacity. Section 91 to 94 of the EMA gives an obligation to authorities to ensure the public enjoy their rights to be informed and participate in environmental resources plans, strategies, policies and program and to participate in environmental related legal preparations. The agency is required to create a mechanism to hear comments from and respond to the public's matters of concern. Section 94 further calls for maximum participation if need through ministerial statutory instruments. However, after all the processes and ZEMA decision, EMA section 115 gives powers to a single minister to make a decision if there is an appeal against ZEMA.

Similarly, the Wildlife Act allows for mining in the national park yet does not state conditions and guideline under which mining can take place retitled the former CBNRMF Coordinator. He further said there was need for binding laws not subject to political decision.

5.4.2: Lack of institutional coordination

A male participant from ZCCN claimed coordination among government ministries and department was a challenge. Environmental resources management cuts across all line ministries namely Ministry of Mines, Environment and Land Management, Water and Energy Development, and Tourism. They said the laws does refer to legislation that guides other departments, for example the EMA is referred to in the Mines and Minerals Act as a guide to obtain a mining license but in reality the different governments work in isolation. For instance, the Zambezi Resource Limited obtained their mining license before conducting an EIA which was irregular. The law in theory is different to the law in practice.

Wild life management then was under Ministry of Tourism, but decisions were made by the minister of Environment and Land Management and ministry of Mine without consultation with ministry of Tourism which was already actively working in the prospected mining area by promoting tourism and encouraging community based conservation strategy.

5.4.3: Political interference in ZEMA operations

When ZEMA's decision was overturned by the minister, they immediately became tight lipped and they could not work with them anymore. ZEMA is independent authority operating under the Ministry of Environment and Natural Resources hence, they cannot speak against the minister. Mutamba Coordinator for Green Living Movement expressed how ZEMA has competent environmental experts who are professional in their operations. But whenever there will projects which politicians are interested in, their professional advice is overlooked. Although ZEMA is 'independent' the independence is only theoretical, in reality politics interfere with their operations.

According to the litigant lawyer, ZEMA is just a rubber stamp organisation without teeth to bite. We have laws but these current politicians do not follow the law, each do as they wish. He expressed how is his career as an a lawyer interested in environmental matters, he had witnessed situation where developers would just go ZEMA and report that they had conducted an EIA and conducted public hearings without the institution being involved. Even the current case of the lower Zambezi, the company representatives had conducted public hearings and deceived people without ZEMA's presence. A case which was challenged as presented in Annex I by the CBNRMF Coordinator when submitting the organization's position.

5.4.4: Political intrusion in the High Court operations

The CBNRMF former coordinated narrated how during the filing of an injunction, the matter was assigned to the late judge Chali. The high court judge requested them to submit

documents for their legal claim and ground which they were objecting the project. Upon looking at the submissions, he noted there was a case to be heard hence he stayed the injunction and the mining project halted. However, during the legal battles, the judge Chali was transferred to Ndola High Court and within a short time he died under unclear circumstances which he claimed could have been states operatives or frustrations because of the matter he was presiding over. Vincent narrated:

Major gap at high court was when the stay was given, immediately within the high the judge who was dealing with the matter was beside other administrative issues he transferred to Ndola and he could not give a ruling, he had asked us to take evidence and we provided overwhelming evidence..... within a short time, he died under unclear circumstances. The matter went quiet. A different judge was given the matter and he wanted to overturn the decision by judge Chali. Everyone suspected the judge was given some money. We wondered why within the same institution the other judge gave a stay and judge wants to start the matter all over again after four years. The matter had taken a lot of political flouts, lives were threatened

After a long time of stay from 2014 to 2019, another judge was assigned the matter who without the litigants' lawyers presided on the matter and made a ruling to allow mining the mining project to proceed. The second judge did not take time to listen to the complainants, their lawyer or let alone consider beginning from where judge Chali had ended which shocked the litigants. A result, they felt frustrated that the law did not favor the process that they were challenging and did protect the environmental rights. All the participants claimed the judge must have been corrupted by the mining investors or acted for politically.

Although the Judiciary is independent in Zambia, it is not free from political interference because the president appoints High Court judges, hence, they at times make decisions politically inclined.

5.4.5: Corruption

Participants from CBNRMF, CRHWCT, GLM and ZCCN cited corruption as a major setback in mobilizing law for environmental rights. According to Vincent of CBNRMF cited the acquisition of a mining license by Zambezi Resource limited was possibly through corruption. Statutory instrument N0.28 of the EIA regulations requires developer whose projects are likely to have impact on the environment to conduct an environmental impact study and submit six copies to the Director-General to obtain a license. But Zambezi Resource Limited had their license before the requires conduction an EIA. One of the anonymous participants from ZCCN narrated:

When political positions are involved in the project and want to protect their interest, you just see how simple and clear things become complicated because there is an invisible heavy hand. They partner with investors as a result they override ZEMA decision when they have their own interest. When technical decisions are overridden. We have misappropriation of state resources as revealed in the financial intelligence report (FIC) report which is evidence of corruption. Information usually come to light when the incumbent government leaves power. That when matter come to light and court issues begin. Because currently they are protected

A participant from CRHWCT expressed displeasure in the current government saying is was formed of criminals and very corrupt. He narrated:

Because of exposure of Zambezi Resources Limited in Australia, they could not continue instead sold the company to another international criminals from Dubai who came through their connection to state house. Once one enters state house, it means they have some green light. The current leadership is made of criminals who have partnered with international criminals.

The participant from GLM claimed the investors had corrupted the traditional leadership in the area to speak in favor of the project. In the Zambian culture once a traditional leader speaks then it is final, her/his subjects cannot oppose. Hence, they were taking advantage of the local custom. The litigants' Advocate also complained of corruption in environmental governance, once important positions like minister are corrupt, then they will not regard the law.

Because of corruption allegation with the current government, three of the participant organisation hope for a change of government because they believe the biggest opposition party United Party for National Development (UPND) has credible leadership to improve governance and stamp out corruption. To them protecting the environment required political will which was lacking in the current government because of too much corrupt practices.

5.5: Critical analysis

Considering the state inclined INGOs' hesitance to support the legal mobilizing team financially, and state brutality experienced would suggest that legal mobilisation for environmental rights is a lone and risk undertaking which requires resilience and endurance for environmental justice which is social justice.

The lacuna in law experienced were not necessarily gaps but deliberate coin for political interest which is the embeddedness of local environmental law in politics. Putting in the context of environmental law being embedded in politics of international trade. Institutions of environmental governance work under political supervision which is a hindrance to environmental protection. Just like during colonialism, the colonialists worked with traditional leaders who were tool to oppress their subjects for exchanges of goods. Under neoliberalism, politicians are being corrupt by the corporations from the Global North to allow access to environmental resources without regarding environmental rights. The business corporations influence court decision through corruption as claimed in case of Nyasulu who was warned against challenging corporations who have connection to the judiciary (Lusaka Times, 2015)

The challenges of lack of resources during social mobilisation in communities who already were being bribed by the corporation to accept the project as claimed the participants from ZCCN, makes legal mobilisation against corporations who have resources is quite challenging for civil society with limited resource and support.

Chapter 6 | Recommendations on environmental governance and strategies to improve legal mobilisation for environmental rights protection

6.1. Introduction

Having learned from their experience during legal mobilization, the civil society organisation still believe something can be done to safeguard environmental rights in Zambia. In this chapter, I present their recommendations on changes that they would wish to happen and are advocating and lobbying for in order to strengthen environmental governance and protect the environment in Zambia. Below were the recommendations:

6.2:1 Advocating for legal reforms

The current legal framework has serious lacunas deliberately meant to give politicians an upper hand in the management of environmental resources. To avoid that, the civil society organizations are lobbying and advocating for legal reforms as follows;

6.2.2.: Expert advice to be final

The overturning of the ZEMA decision a single minister made them realize the gaps in the law, going forward they would want changes to be made so that expert advice can be final. Politicians work hand in hand with investor because they fund election and give them opportunities to do business for personal gain. The expert at ZEMA are competent and experienced, the reason why they objected the mining project. Therefore, all the participants wanted legal reforms that make ZEMA decisions final. If there should be an appeal, it should be addressed to national assembly so that members of parliament who are elected by the people of Zambia can debate and decide in the interest of their electorate and not a single minister. The decision by parliament would not be biased because the opposition members of parliament who give checks and balances will be there to defend the interest for the people.

6.2.3: Position of Director-General to be alleviated to the cabinet level

Vincent of CBNRMF said the civil society organisation were advocating for the position of Director-General to be elected to the level equivalent to the secretary to the cabinet and should be answerable to the national assembly and not minister. This will help the institution to operate independently without political interference. Being under a minister defeats the whole purpose of being independent.

6.2.4: Appointment of High Court Judges

Currently High Court judges are appointed and sworn in by the president. This makes them vulnerable to the make decision against politicians. High court judges too must be appointed by an act of parliament. Vincent alluded that the long stay experienced when the matter was being presided over by judge Chali could be he did not want to rule against the government and it was against his conscience to rule in favor of mining hence the long stay.

6.2.5: Degazetting of protected areas to be at parliament level

Zambia has experienced a continuous trend of degazetting protected areas by ministries in charge. Chimambo gave an example of Forest 27 who was degazetted by the minister of Environment and Natural Resource and the land was shared between PF ministers and the Director at department of forest. He said he found the act to be very appalling. He stressed how the current government who full of criminals and they were destroying resources and amassing wealth to themselves. He passionately narrated:

Protected areas are there created by the first republic president Kenneth Kaunda for the benefit of the current and future generations. Now these criminals are finishing everything....so we are pushing to stop everything. We have taken them to court for destroying forest 27. We want them to reverse everything and pull down the structures.

All the participant felt a decision like mining in the national park was landmark decision which requires national consensus not an individual minister.

6.3: Intensification of social mobilization

The participants from ZCCN expressed how they were being accused of claiming to be working in the for the interest of the local communities when they themselves were quiet. There is need to sensitize the community members on the importance of environmental resources and how they can be affected when projects like mining are implemented. Robert gave an example of Kabwe town which had a lead mine. The mine is closed today but the country was grappling with the effects of lead poisoning decades after the mine closed. The mine will only operate for 25 years but the environmental effects maybe forever because reclaiming land after mining is also more costly than the price of minerals which is holes remain and the land became desolate. Therefore, three participants said Zambians needed to be educated to be able to rise up and speak for themselves and protect their environment.

6.4: Critical Analysis

Legal mobilisation by through advocacy for legal reforms against lawfare by political powers (Handmaker and Taekema 2019), may improve environmental protection. However, it may need political will as claimed that the current government has no political will for environmental protection. Under such circumstances advocating for legal reforms may not yield results. Considering how used of media and many voices speaking forced the president to suspend the mining activity against court ruling. Social mobilisation intensification even beyond boundaries may finally stop the whole deal permanently.

While advocating for legal reforms locally, the civil society organizations could consider partnering with organizations like TWAIL advocating for decolonization of the global capitalist law which is a function of environmental rights violation as claimed by (Vondoepp, 2005: 281-282). The regimes as argued by (Graham et al, 2011: 37-185) are designed to repress citizens while working for the benefit of the capitalist from the Global North (Mutua and Anghie, 2000;38). Perhaps if mining activities (not LZNP but other areas as argued by Nyambe and Phiri [2010:7] Zambia has vast potential for mineral resources is due to its unique geographic location) are undertaken by the local people they would care for the environment since is their own environment and whatever negative effects, it would be them to suffer hence being conscious. During the interviews, the litigants' lawyer claimed ZEMA was stricter with Zambians with regards to adhering to environmental requirements, yet foreigners specially whites break the laws without being held accountable. Hence, Zambians maybe could be more accountable and exploit resources in a sustainable manner.

Chapter 7 | Conclusion and discussion

In this study, I endeavored to answer the question *what are the challenges and opportunities experienced by NGOs involved in legal mobilisation for environmental rights with regards to the Lower Zambezi National Park in Zambia and what lessons can be learnt which can contribute to the concept of legal mobilisation for environmental rights and environmental policies in Zambia?* Three concepts were used to answer the question. First the environmental rights concept was used to understand their legal claim or threatened environmental rights which led to the legal mobilization. Secondly the legal mobilisation concept was employed to comprehend strategies the civil society organisation used, their experiences and opportunities discovered to strengthen environmental protection in Zambia. The civil society organisation concept helped understand the challenges faced by the civil society organization. The research findings reviewed that civil society organisation were concerned about surrounding communities' livelihoods and biodiversity conservation in the protected area which directly and indirectly was for human benefit. Strategic litigation was used which involves lawsuit complemented by other legal based strategies including advocacy, protest, social mobilization, use of different media platforms and engaging INGOs in Australia where the parent company for Membership Resource Limited origin from.

The civil society organizations faced challenges bordering on lack of technical and mostly financial resources as there were nonprofit entities, but donor or well-wishers funded organizations, lack of public spaces due to state brutality, political interference in the operations of environmental governing institution and judicial system and alleged corruption of government institution and judiciary resulting to a ruling in favor of the mining project which would violate environmental rights. However, because the legal mobilisation strategy used was strategic litigation, the engagement with the INGOs from Australia and their subsequent action made to the company to be penalized losing 300,000 USD on the West Australian Stock Exchange Market. The mining company later sold its license to a Dubai based company which went to Zambia through state house. Social mobilisation accompanied by use of different media platform with an online petition raised awareness within and outside Zambia. Many voices began speaking forcing the Zambian president to make a statement that he would stop the mining project and respect the people views which was one the opportunities discovered. The litigant s appealed against the high court ruling before the Zambian Supreme Court and the matter was still in court during the time of research.

From their legal mobilization, the civil society organisation discovered opportunities which could strengthen environmental rights protection. Their biggest aspiration was to mobilize law to curtail political involvement in environmental governance and for example a single minister deciding against expert advice and majority identified as a lacuna in the EMA. Although that may be hesitantly implemented because the same politicians are responsible of enacting laws through the national assembly. However, the other opportunity of intensified social mobilisation to raise awareness at grassroot level and amongst all Zambians could help achieve goals. With more voices speaking, politicians would be hesitant to act against the wish of the majority as they depend on majority for their stay in authority.

In conclusion, while environmental degradation is affecting the whole world, communities in the global South countries like Zambia are affected differently attributed to the coloniality in the international law of economy that creates poverty in developing countries threatening the survival of the most vulnerable while enriching the developed countries. Global and local environmental laws as alleged embedded in politics of economy which is why they cannot effectively protect the environment. Therefore, civil society organizations and individuals need to put spirited fights through various legal strategies to fight for environmental rights especially social mobilisation to raise more voices. A consideration to begin

advocating for the decolonization of international economy law responsible for creating global inequalities influencing how environmental challenges are experienced is recommended. I wish to recommend that more research on strategies that they can be employed to fight for environmental rights.

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Annexes

Annex I: ZEMA objection letter

PROPOSED LARGE SCALE MINING ACTIVITIES UNDER LICENSE NUMBER 15547-HQ-LML MWEMBESHI RESOURCES LIMITED IN LUANGWA DISTRICT

1.0 PROJECT BACKGROUND

1.1 PROJECT TITLE:

Proposed large scale mining activities under license number 15547-HQ-LML Mwembeshi resources limited in Luangwa district

1.2 PROJECT PROPONENTS:

Mwembeshi Resources Limited
P.O. Box 50395 Ridgeway,
LUSAKA

1.3 PROJECT LOCATION:

The project is located in the Lusaka Province of Zambia within the Lower Zambezi National Park. The distance from Lusaka is approximately 180 km by road.

1.4 DATE OF SUBMISSION BY PROPONENT:

March 14, 2012

1.5 DATE OF CONSIDERATION BY AGENCY:

August 31, 2012

2.0 DETAILS OF THE PROJECT:

The development of the Kangaluwi mining operation will be over a period of two and a half years and see the construction of a 90,000 tonnes per annum copper sulphide concentrator and maintenance workshops, fuel storage depots, mining facilities, tailings storage and water storage facilities for a mine production of about 8 million tonnes per annum, a waste rock dump, water supply facilities (most water will be supplied through various as, yet not defined and finalized dewatering schemes) and administration offices. The site access road will be upgraded to provide secure access to all mining and processing areas throughout the year.

Additional infrastructure required will include cooking and sleeping facilities at sites, waste facilities and a self sustained camp.

Apart from the stated components above, other items, including offices, accommodation for employees and sewer treatment facilities are not considered under

the scope of this report. They will be subject to a different study when the feasibility is conducted on the appropriate designs and also sites for the infrastructures.

3.0 **DECISION BY AGENCY**

3.1 The Project is **rejected** because of the following reasons;

- 3.1.1 The Tailings Storage Facility (TSF) will be located in the Zambezi escarpment. The area is prone to earthquakes and it is therefore risky to put up a TSF as the chances of failure are high. If the TSF was to fail, the impact would be significant and would extend to neighbouring countries.
- 3.1.2 The mine is located about 30 km from the Mana Pools World Heritage Site in Zimbabwe. Any possible failure of TSF or abnormal discharge of effluent would affect negatively the World Heritage site.
- 3.1.3 The issue of Acid Rock Drainage (ARD) and consequently the metal leaching has not been addressed. The EIS states that level 112m to 116m contains material that has the potential to generate acid and yet no mitigation measures both in the short and long term have been outlined. The impact of ARD would be significant especially after the mine has been closed.
- 3.1.4 The proposed site is not suitable for the nature of the project since it is located in the middle of a national park. The adverse impact of open pit mining would therefore permanently destroy the landscape of the Park, thereby reducing the tourism value of the Lower Zambezi National Park. Lower Zambezi National Park is one of the four major national parks according to the Zambia Wildlife Authority (ZAWA) which earns the country a lot of money.
- 3.1.5 The footprint of the mine would increase when the road is widened and the power line is constructed. The integrity of the national park will therefore be compromised and in the long term the ecological value would be affected.
- 3.1.6 The estimate of mine life is not based on verifiable facts as the EIS is full of contradictions. The benefits from the mining operations may be for a very short period of time but the consequences may be far more reaching.

Correlates

Annex II: objection letter for the project to ZEMA by CBNRMF



ZAMBIA COMMUNITY BASED NATURAL RESOURCE MANAGEMENT (CBNRM) FORUM

c/o WWF Zambia Office, P O Box 50551 RW Lusaka. Telefax: 0211-254040/253749

10th May, 2012.

The Acting Director
Zambia Environmental Management Agency (ZEMA)
P.O

.
Box
351
31
LU
SA
KA.

Dear Sir,

Re: **Proposed Kangaluwi Large Scale Copper Mining
Project By Mwembishi Resources Limited in Lower
Zambezi National Park, Luangwa District, Lusaka
Province.**

The Community Based Natural Resources Management Forum (CBNRM) is a civil society platform for natural resources and environmental based organisations in Zambia. The forum represents over 100 members comprising NGOs, CBOs, FBOs and individual.

In response to the call for comments on the Environmental Impact Statement (EIS) for the proposed Kangaluwi Large Scale Copper Mining Project in Lower Zambezi National Park, the Zambia CBNRM forum, on behalf of the general membership and partners strongly object to the approval of the mining project.

The proposed project is inappropriately located, and no amount of mitigation will **adequately safeguard** the **unique, natural and cultural values** of the area. Large scale mining by its very nature will result in extensive changes in the landscape structure and surrounding areas. Excavation, construction, road development and mine blasting will lead to irreversible changes to the LZNP that is likely to affect its surface and ground water system. The target area is prone to flash flooding and opening up the area for the mine and road network is likely to increase the severity of such events. Erosion, nutrient loading and

contamination of surface and ground water sources is likely to increase with increased runoff from roads, plant and housing areas.

Our objection to the proposed mining project is first based on the principle in relation to the present land use; technical concerns (production & project scope) for the following reasons:-

- i. **Principle** – *the site is a national park (IUCN category II) which was created based on specific values that are negated if the project goes ahead.*

The proposed mining project is in direct violation of the principles underpinning the creation of the park. The mine will irrevocably destroy the biodiversity (habitats, species and likely impacts on the genetic pool of some species) that make Lower Zambezi National Park a unique site of conservation importance. The mining concession, if it goes ahead, will cause irreparable damage to the low land deciduous thickets, lead to significant water, air, and noise pollution, and disturbance of the natural and scenic value of LZNP, the combination of which is unique to this site.

The project will adversely alter the governance and land use structure of the LZNP and surrounding areas. It will also, as has been experienced in similar projects in different contexts, increase settlement pressure on fragile ecosystems, lead to significant deforestation and negative social and health impacts. Mining in LZNP will open the area up and encourage encroachment and agricultural expansion into the park. This part of the park has a history of encroachment and given the high pressure on arable land in the area, mining will provide justification for reclassification or degazetting of the park or significant parts of it for agriculture and settlements. Disturbance of the LZNP as proposed in the mining operation will severely impact the regionally important wildlife corridor and dispersal area, could lead to increased human-wildlife conflict, and is likely to lead to increased poaching. Excavation, increased noise pollution from blasting activities, earth moving equipment, and other mine operations, increased dust and particulate pollution would drive wildlife from the LZNP and areas surrounding the mine licence area into settlements, lead to degradation of foraging habitats and reduced air quality. In addition, development of the mining project would lead to major internal and external immigration of people to mine licence and surrounding areas which would further result in significant degradation of fragile ecosystems. Additionally, an increase in the number of mine employees living in temporary accommodation would significantly increase HIV/AIDS risk behaviour and exposure and other social ills.

- ii. **Technical Thoroughness** – *the EIA falls way short of the standards expected of a project of this nature and location.*

This EIA reports on a proposed mining development and therefore

requires a clearly defined project scope against which the likely impact and proposed mitigation measures can be assessed. Mining projects usually have a degree of uncertainty attached to their lifespan and it is for this reason that it is important to clearly define the scope of the project covered by this EIA and differentiate the scope from forward looking statements based on hope and no data. The sections of the report dealing with mining and resources fail to do this. Failure to articulate the project scope against which the likely impact and proposed mitigation measures can be assessed compromises the validity of the proposed mitigations. The technical mining aspect of the report in terms of project scope is so vague and contradictory it is not possible to discern whether this has been done intentionally to mislead or whether it is a result of incompetence on the part of the authors. Any proposed industrial development within a National Park should be subject to detailed scrutiny and the standard of EIA related studies, and reports thereon, should be correspondingly broad and detailed. The technical mining aspect of the report falls well short of the standard of responsibility and professionalism demanded of such a development even outside a National Park.

Annex III

MINUTES OF MEETINGS WITH STAKEHOLDERS IN LUSAKA, LUANGWA, RUFUNSA AND CHONGWE

Tuesday 07 March 2011: Meeting with Senior Chief Mburuma Minutes	
Background brief / General discussion	Comments
<ul style="list-style-type: none">▪ The meeting started with an apology and explanation of the initial mix-up of the Chiefdom in which the Kangaluwi Mine Project lies▪ The Chief welcomed the apology and expressed happiness that the misunderstanding had been corrected. He then explained that the place where the old mine lies is where earlier chiefs used to stay until the missionaries had to move them to the current location due to Tsetse infestation▪ The Chief was informed about the process involved before the mine is actually running and the progress so far made. He was told that the mining license had been granted and now a Consultant (GeoQuest) had been engaged to undertake an Environmental Impact Assessment	
Concerns	

	<ul style="list-style-type: none"> ▪ Senior Chief ... was concerned that due to lack of initial consultations with the right people, the subsidiary company was named Mwembeshi instead of Mwambashi, which is the name used in the area <ul style="list-style-type: none"> - <i>Dennis acknowledged that he was hearing about the name for the first time and assured the Senior Chief that he was going to convey that to the Company</i> ▪ The chief was concerned with the likely impact of the project in terms of creating job opportunities for his subjects. He however acknowledged that his subjects do not have all the skills that will be needed by the mine but he would happy if priority is given to locals when it comes to the unskilled labour. <ul style="list-style-type: none"> - <i>Dennis indicated that the Company's policy is to give priority to locals for jobs and only look outside local communities if the needed skills are not available</i> - <i>Adrian added that employment opportunities is one of the benefits that the area will get from the Mine which will enhance the lives of people in the area</i> ▪ The Chief said he had taken note of the developments that Mwembweshi Resources had made in other areas in the form of schools and bore holes and would be happy if the same could be done in his chiefdom <ul style="list-style-type: none"> - <i>Dennis informed the Senior Chief that Mwembweshi Resources' policy is to invest in communities where it operates and therefore will work with the Senior Chief and other stakeholder to identify project to which they could contribute.</i> 	<i>Company Senior management would be informed about the Issue regarding the name</i>
	Conclusion	
	<ul style="list-style-type: none"> ▪ In conclusion, it was agreed that constant contacts between the Senior Chief and Mwembweshi Resources will be maintained in future so that mistakes not made o repeated. 	
	Attendance	
1.	His Royal Highness Senior Chief Mburuma	
2.	Adrian Shikwe – GeoQuest Consultant	
3.	Dennis Mwanza – Mwembeshi Resources/Zambezi Resources	

Tuesday 07 March 2011: Meeting with Honourable Charles Shawa MP (Area Member of Parliament and Lusaka Province Minister)		
	Background brief / General discussion	Comments
	<ul style="list-style-type: none"> ▪ The Kangaluwi Mine Project was presented to the Feira Constituency Member of Parliament, Honourable Charles Shawa, in detail explaining its history, ownership, location (with the aid of maps), planned development stages and costs. <ul style="list-style-type: none"> - <i>The Minister asked about the location of the old gold mine near the area and if there are any deposits still remaining. He also wanted to know if Mwembweshi Resources had found any gold during the exploration. He was told that Mwembweshi Resources had looked into that and found that the gold had all be exploited at the old mine. The amount of gold that was found during exploration was not sufficient for large scale mining.</i> ▪ Honourable Shawa was also informed about the processes involved before the mine could finally be operational. He was also told that the mining license had been granted and now a Consultant (GeoQuest) had been engaged to undertake an Environmental Impact Assessment up to May 2011. <ul style="list-style-type: none"> - <i>The area Member of Parliament said he hoped that the process could be concluded soon so that the area could benefit from the development.</i> ▪ The honourable Minister told the meeting that he was very concerned with the level of underdevelopment in Luangwa and the resulting high levels of poverty. He said the area would therefore benefit greatly from the mine, once it is operational as a lot of other opportunities would arise which would benefit those that may not directly benefit from the mine. ▪ He said the area had not seen a lot of infrastructural development and significant improvement in social service delivery due to lack of development. He hoped that the coming of the mine near the area could lead to the tarring of the main road and regular maintenance of feeder roads. More and better schools, health centres and boreholes are what the MP also hoped to see in his Constituency. <ul style="list-style-type: none"> - <i>Adrian and Dennis added that the mine would act as a catalyst to development as farmers in the area would supply goods and services which would enhance the cash economy of the area. The mine access road and powerline could also benefit communities near the area.</i> 	
	Concerns	
	<ul style="list-style-type: none"> ▪ Honourable Shawa told the meeting that people were worried that the exploration had taken long and had started wondering if the Company was collecting some valuable minerals in the pretext of collecting geological samples. <ul style="list-style-type: none"> - <i>Dennis explained that exploration could sometimes be painfully slow and that samples collected did not have a high content of minerals which could be processed for large gains</i> ▪ The area MP wanted to know what measures would be put in place to ensure that wild 	

	<p>life in the game park and the environment is protected.</p> <ul style="list-style-type: none"> - <i>He was told that during this consultation process with stakeholder, their concerns will be gathered and measures on how to best address them will be put in place. Mwembweshi Resources will work with ZAWA to come up with a game management programme which may include ZAWA having a base at the mine site. In terms of the environment, an environmental management plan would be worked out, which will stipulate how the environment would be taken care of.</i> <ul style="list-style-type: none"> ▪ Honourable Shawa wanted to know if there are any people that would be displaced due to the mine or off-site investments. <ul style="list-style-type: none"> - <i>He was told that no one will be directly affected as the mine will be located in the game park where there are no people who live there and that the mine will be using an already existing access road. Plans are that the road will be tarred so that there is little dust.</i> ▪ Honourable Shawa then wanted to know if Mwembweshi Resources also intends to work on the access road that connects Luangwa with lodges and Kangaluwi. <ul style="list-style-type: none"> - <i>The Minister was told that, that would depend on what stakeholders would like to see as Mwembweshi Resources would like to open up the route to contractors and suppliers to the mine. He was also told that lodges would be more accessible if the road was worked on and this could lead to an increase in tourist flows to the area.</i> ▪ The Minister asked on the number of jobs that would be created by the mine and if locals would be favoured during recruitment. <ul style="list-style-type: none"> - <i>He was told that the exact number would be known once the design has been completed but an estimate of 200 jobs would be directly generated by the mine and more would be generated by supporting businesses. The policy of the Company would be to enhance the lives of locals through jobs, among other things. Therefore, priority would be given to them and others would only be considered where skills cannot be locally obtained.</i> ▪ The area Member of Parliament wanted to know what community investment programmes Mwembweshi Resources had planned. <ul style="list-style-type: none"> - <i>He was told that the company has a very good social investment policy as evidenced by the schools and bore-holes that have been put up in Chieftainess Nkomesha's area over the past three years that the company has been doing exploration work. The company intends to work with community organisations such as cooperatives in promoting farming and small-scale business venture.</i> 	
	Conclusion	
	<ul style="list-style-type: none"> ▪ The Minister said that the development is welcome in the area and requested that he should be regularly updated on the progress and informed about future public consultations. He also said he would be available to provide any support to the Project that he could during this process. 	

	Attendance	
1.	Honourable Charles Shawa MP	
2.	Adrian Shikwe – GeoQuest	
3.	Dennis Mwanza – Mwembeshi Resources/Zambezi Resources	
	Tuesday 07 March 2011: Focus Group Meeting with Luangwa District Officials Minutes	
	Discussions	Comments
	<p>AGENDA</p> <ul style="list-style-type: none"> I. Welcome remarks/ Introductions II. Background and outline of the Kangaluwi Mine Project III. Expected Project Impacts IV. Stakeholder feedback and responses V. Any other business VI. Concluding remarks 	
	<ul style="list-style-type: none"> ▪ The meeting started with welcome remarks and introduction. It was then followed by a background and overview presentation of the project by Dennis. ▪ The likely environmental, social, cultural and economic impacts were then presented by Adrian. The meeting was told that there would be environmental impacts as a result of the clearing of the mining site, setting up and operations. Trees would be cut down, dust, smoke, and liquid and solid smoke would be emitted to designated sites. However, these would be managed using the best practices that would be outlined in the environmental management plan. There would be an influx of people from other parts of the country, which could affect the social and cultural aspects of communities. Jobs would be created and other opportunities such as supplying of goods and services to the mine would arise. More infrastructure would be developed other than the mine which would benefit the communities. <ul style="list-style-type: none"> - <i>The district officials responded that they would be glad to see a lot of development activities in the area so that Luangwa could catch up with other towns in the province.</i> - <i>They said the people in Luangwa are very excited about the mine and the employment prospects that it would create.</i> - <i>They requested that the mine provide some skills training to local residents who could not meet the skill requirements so that they employ as many locals as possible.</i> ▪ They were told that a Social and Environmental Impact Assessment was underway to look at the likely impacts in more detail and come up with mitigation measures aimed at minimising the potential risks with the project. 	
	Concerns	
	<ul style="list-style-type: none"> ▪ The district officials mentioned that they were mindful of the concerns of the 	

	<p>lodge owners in the Lower Zambezi regarding wild life and the environment and wanted to know how the Company intends to address them.</p> <ul style="list-style-type: none"> - <i>Dennis explained that the EIA would outline all the details on how Mwembeshi Resources would manage the environment and wild life is protected. He pointed out that there are no animals at the actual mine site as the impression may have been created. The terrain is steep and hence animals are found in the valley part of the park. Other than that, he said the Company would work with ZAWA to ensure that there is a game management plan. A consultation meeting is planned for the lodge owners at which their concerns will be discussed.</i> <ul style="list-style-type: none"> ▪ The district officials wanted to know what benefits the communities would derive from the Kangaluwi Mine Project. <ul style="list-style-type: none"> - <i>They were told that the Company had a social responsibility culture which aims at ensuring that communities where it operates also benefit.</i> - <i>It will therefore work with stakeholders to identify areas where they would like to see the Company contribute.</i> - <i>They were also told about the schools and boreholes that were put up in Chieftainess Nkomesha by the Company during the exploration period and it is expected that it would do more for the communities once it is operational.</i> - <i>The officials were also told that there would be jobs and other opportunities that would benefit the locals.</i> ▪ The district officials wanted to know if the mine would encourage the diversification of the local economy or would make people to depend entirely on mining. <ul style="list-style-type: none"> - <i>Dennis answered that Mwembeshi Resources would work with local stakeholders to identify other income generating activities which the Company could support. The intention is to work through community groups.</i> 	
	Conclusion	
	<ul style="list-style-type: none"> ▪ In conclusion, it was agreed that a district committee would be constituted. The committee will, among other things, maintain or act as a link between the communities and Mwembeshi Resources. The Committee would be composed of different stakeholders who are also part of the District Development Committee. 	
	Attendance	
1.	- District Commissioner - Stanislaus M. Kalunga	
2.	- Acting District Council - Tryson Chunga	
3.	- District Planning Officer -	
4.	- Chairman - Simon Tembo	
5.	- Internal Auditor - Tembo John K.	
6.	Adrian Shikwe – GeoQuest Consultant	
7.	Dennis Mwanza – Mwembeshi Resources/Zambezi Resources	

Tuesday 07 March 2011: Meeting with Chief Mpasha - Rufunsa		
Background brief		Com-ments
	<ul style="list-style-type: none"> ▪ The meeting started with a reminder of Kangaluwi Mine Project and an explanation of the stages that have to be followed before the project is operational. The Chief was told that the mining license had been granted and that now Mwembeshi Resources had contracted GeoQuest to undertake a Social and Environmental Impact Assessment. ▪ He was told that the S-EIA process would give stakeholders an opportunity to bring out their concerns and the likely impacts which would be addressed under mitigation measures 	
Concerns		
	<ul style="list-style-type: none"> ▪ The Chief was concerned that due to lack of consultations with the right people, the subsidiary company had been given the name Mwembeshi instead of Mwambashi. ▪ The chief was concerned with the likely impact of the project in terms of creating job opportunities for his subjects. He however acknowledged that his subjects do not have all the skills that will be needed by the mine but he would be happy if priority is given to locals when it comes to the unskilled labour. ▪ The Chief said he had taken note of the developments that Mwembeshi Resources had made in other areas in the form of schools and bore holes and would be happy if the same could be done in his chiefdom 	
Conclusion		
	<ul style="list-style-type: none"> ▪ In conclusion, it was agreed that constant contacts between the Senior Chief and Mwembeshi Resources will be maintained in future so that mistakes not made o repeated. 	
Attendance		
1.	Chief Mpasha	
2.	Adrian Shikwe – GeoQuest Consultant	
3.	Dennis Mwanza – Mwembeshi Resources/Zambezi Resources	

Tuesday 29 April 2011: Meeting with Zambia Wildlife Authority (ZAWA)		
	Background brief	Comments
	<ul style="list-style-type: none"> ▪ The meeting started with introductions, then followed by presentation of an outline of the Project background and plan by Dennis who informed ZAWA that Zambezi Resources had been issued a mining licence and was now about to start further geological work, feasibility study and EIA. ▪ He told ZAWA that the mine licence area is about 245 km². The area has 23 million tonnes of copper deposits that would be mined by open pit method and would be concentrated on site before being transported to refineries. ▪ Ulf Pettersson of GeoQuest explained the EIA process and how GeoQuest intends to undertake it. He said the first stage was the initial meetings that were being held with stakeholders and the establishment of a working relation between all the stakeholders that would be involved in the process. 	
Concerns		
	<ul style="list-style-type: none"> ▪ The Director of Planning and Research, Mr. Muleya – who was nominated as the contact person between the EIA Team and ZAWA, expressed concern that the Zambezi Resources would be starting to mine the copper deposits in Lower Zambezi National Park which is their third most important park in terms of tourist visits and revenues. He said the mine would affect the ecosystem of the park which would not be repaired. ▪ <i>The Zambezi Resources representative told ZAWA that they are planning to apply the best practices available as they operate in the park and would strictly follow the rules that ZAWA would come up with. He explained that since they started exploration works, there has never been any incident. He gave an example of Kruger National Park in South Africa as one good example where the mine and park co-existed.</i> ▪ <i>The Director General responded that co-existence in Zambia would be very difficult given the constrained position of ZAWA to be able to monitor the movements of ZRL officials. He further stated that ZAWA's primary function is the conservation of wildlife and the environment and thus would have been very happy if the mining project was located outside the mine.</i> ▪ <i>The DG told the meeting that ZAWA though the mine offered attractive benefits to the country in the short-term; it was an exhaustive venture which could also be costly on the environment if not well handled.</i> ▪ ZAWA was told that the mine would use state of the art technology which is different from the one that had been used when the existing mines on the Copperbelt which had started operating before issues of environmental damage were an issue. The mine would hardly be noticeable in the area as there will be no level of pollution as that which is associated with refineries. The pits could later be turned into lakes which would act as water reservoirs after decommissioning and the up-graded road would act as access route to the park. ▪ <i>ZAWA expressed concern with the noise that an increased flow of traffic in the park</i> 	

	<p>would generate. They said this could scare away some of the wildlife. ZAWA also mentioned to the meeting that they had a General Management Plan in which they have set out how they intend to develop the park by putting up cable cars in the escarpment area so that nature tourists can enjoy the beautiful scenery. ZAWA told the meeting that the escarpment also acted as water catchment areas which if polluted would affect the ecosystem downstream.</p> <ul style="list-style-type: none"> ▪ ZAWA brought in the issue of possible concession or compensation from Zambezi Resources for mining in the park but this could not be discussed further and was referred to future engagements depending on the final outcome of the EIA process. 	
Conclusion		
	<ul style="list-style-type: none"> ▪ The DG ended the meeting with an appeal to the EIA Team to be open minded and professional as they undertake analyses and compile probable impacts of the project. He said we should be mindful of the catastrophes that other people have experienced for having ignored the way nature operates. 	
Attendance		
1.	Ulf Pettersson – GeoQuest	
2.	Adrian Shikwe – GeoQuest	
3.	Dennis Mwanza – Mwembeshi Resources/Zambezi Resources	
4.	Mr. Muleya – ZAWA	
5.	Edwin Matakwei -- ZAWA	
6.	Vincent Nyirenda - ZAWA	
Tuesday 05 April 2011: Meeting with Conservation lower Zambezi		
Background brief		Comments
	<ul style="list-style-type: none"> ▪ The meeting started with a presentation of the EIA process for the Kangaluwi Project by Dr. Ulf Pettersson. Ulf also pointed out that the mining license for the Project had been granted and that now Mwembeshi Resources had contracted GeoQuest to undertake an Environmental and Social Impact Assessment. ▪ Ulf told the representatives from CLZ that the purpose of the meeting was to establish a ‘Focus Group’ with CLZ which has been identified as a major Stakeholder to the Kangaluwi Project. The function of the Focus Group is to establish a working relation between the Stakeholder and Mwembeshi Resources and to act as a channel for communication. The Focus Group will give stakeholders more opportunities to bring out their concerns and discuss likely impacts which can be included and addressed during the EIS process. 	
Concerns		
	<ul style="list-style-type: none"> ▪ Mr. Grant Cummings wanted to know how long the EIA process was going to take. ▪ In response Ulf indicated that the time frame for the EIA work would be four (4) months. Grant then said according to his understanding, a good standard EIA process takes about one year. It was however explained that a lot of background studies that would make the process take longer had already been undertaken; hence GeoQuest would use that previous work when writing the EIS. 	

- Grant also asked if GeoQuest had all the skills needed for this process.
- *He was told that the work would be undertaken by a combination of experts both from GeoQuest and external consultants who will be hired to undertake some specialist work. A list of all the experts and their roles was presented*

- Grant told the meeting that he was yet to come to terms with how Zambezi Resources came up with the idea of exploring a national park for mineral deposits and later alone decide to undertake mining activities in such a sensitive environment when there are other mineral rich areas in Zambia.
- *He was told by the Senior Geologist Dennis Mwanza (Mwembeshi Resources) that the Law of Zambia permits it and government has encouraged investors to explore the country for minerals. Zambezi Resources took up this opportunity and explored different areas, the Lower Zambezi inclusive. It has so far invested about US\$ 15 million in to get to the stage where things are at the moment. It would not make any sense for government to allow the company to invest so much money in exploration and then to refuse it to develop the project into a mining project. This would have wider implications on the attractions of other investors on a national level.*

- Grant told the meeting that he had reservations with Zambezi Resources going into actual mining after the pollution they saw some few years ago which changed the colour of the Chongwe River when they were doing exploration works.
- *Dennis explained that the site Grant was referring to was being explored by Glencore and not Zambezi Resources. He said there were no incidents in Chakwenga as far as he was informed. Hence CLZ should use that record when judging Zambezi Resources' performance.*

- The viability of the Kangaluwi Mine Project was questioned considering the size and the minerals that are there by the CLZ. Grant also asked if there are other minerals like gold that Zambezi would be targeting. He wanted to know what mining method would be used and if any sulphuric acid would be used in the process. The other related concern was the source of water for the mine.
- *Zambezi responded that the viability of the Project was assessed by independent reputable global consultants (CSA Global) who concluded that it's very viable as it is a high grade low volume copper project. The sites that have been worked on showed a deposit of 23 million tonnes at .9% grade of copper. The pits would reach up to 300m in diameter and 120m depth. Gold presence is very low for large scale mining hence Zambezi will not be focusing on it. Zambezi Resources intends only to concentrate the ore at site where after they will sell it to a smelter on the Copperbelt or abroad. As the ore is sulphide no sulphuric acid is needed when processing the ore. Water would come from the nearby streams and from the de-watering programme for the pits (details on actual streams and boreholes not decided as yet). No water will be extracted from the Zambezi River.*

- There were questions from CLZ on the chemicals that would be used in the mine, the size of the tailings dam and who would be taking care of them long after the mine has been closed.
- *Zambezi Resources responded that the chemicals that would be used when concentrating the ore are decomposed and becomes benign within 24 hours when exposed to sunlight. The exact size of the tailings dam would be estimated during the feasibility study.*

The practice when closing a mine has been that tailings dams have been turned into lakes that can be used as water holes for the wildlife. To ensure that funds are available for the mine closure plan Zambezi Resources will contribute to the Environmental Protection Fund under the Mine Safety Department which is the authority that has the responsibility of taking care of decommissioned mines.

- The CLZ representatives were concerned that the opening of the mine in the national park would cause it to lose reputation and value which cannot be quantified in monetary terms. Some tourists would also be discouraged from visiting the park just like potential investors would also be discouraged from investing in a park that has a mine.
- *Zambezi Resources responded that it would use best available practices so much so that the presence of the mine in the park would hardly be noticed. It would also work with stakeholders in ensuring that it returned its competitiveness.*

Zambezi Resources also cited examples of mines that are located in national parks from which it will have to learn how they have co-existed.

- CLZ representatives were interested in knowing what working arrangements were there between Zambezi Resources and ZAWA and if ZAWA was involved in the EIA Process and their position.
- *They were told that Zambezi had permission from ZAWA to undertake its exploration programme and during the peak of the exercise it was paying an average of US \$ 300,000 per year in entry fees. A 'Focus Group' meeting had also been held with ZAWA at which they were told about the progress of the EIA process. ZAWA will be communicating their official position according to the procedures in the EIS Process. However, they could already inform that they have concerns regarding this project considering that the Lower Zambezi National Park is rated as the third most important park in Zambia.*
- The Representatives from CLZ wanted to know if Zambezi Resources was aware of ION Guidelines which classified LZNP as a category 4 park and the manoeuvres to have it classified as a World Heritage Site which would not be possible if a mine was opened inside it.
- *Zambezi Resources responded that they are also interested in conserving the environment and would like to work closely with ZAWA and CLZ in their conservation activities. The mining activities would take all the concerns into consideration to ensure that minimal impact is felt by the environment. Zambezi Resources said it was only aware of the World Heritage Site status of the park across the Zambezi River in Zimbabwe.*

Zambezi Resources said for ZAWA to have permitted them to explore in the park, it meant that they were aware of the potential risks and benefits that the mine would have. ZAWA had set out conditions for Zambezi Resources which if not followed would amount into sanctions. So far Zambezi Resources has operated within the conditions set out by ZAWA.

Zambezi Resources will always endeavour to stick to national and international guidelines and regulations or whichever of the two standards is higher.

- CLZ representatives responded that ZAWA had challenges in managing National

	<i>Parks due to lack of funds to finance patrols and a limited work force. They said mining would open up the mine to poaching and charcoal burning as was witnessed in the game management area west of the LZNP. They also said the nature of tourism that goes on in the LZNP, nature tourism, was not compatible with mining.</i>	
Conclusion		
	<ul style="list-style-type: none"> The meeting ended with an appeal to the EIA Team to objectively undertake the study and bring out all concerns and probable impacts as they will find them. It was agreed that there shall be openness and exchange of information between the CLZ, ZRL and GeoQuest. 	
Attendance		
1.	Ulf Pettersson – GeoQuest	
2.	Adrian Shikwe – GeoQuest Consultant	
3.	Riccardo Garbaccio – Conservation Lower Zambezi	
4.	Grant Cumings – Conservation Lower Zambezi	
5.	Willie Sweta – Mwembeshi Resources	
6.	Dennis Mwanza – Mwembeshi Resources	
Monday 16 May 2011: Meeting with Environmental Council of Zambia		
	Background brief	Comments
	<ul style="list-style-type: none"> Ulf Pettersson, GeoQuest Senior Environmental Scientist started the meeting with a presentation of the progress that has been made on the EIS work for the Kangaluwi Project. Ulf indicated that two field trips had been undertaken to collect baseline data for the Project EIS and now experts were busy working on the reports. Further samples are going to be collected. An update on the progress of the Project was given by Mr. Dennis Mwanza who told the meeting that further exploration work had commenced and were going on well. Mwembeshi Resources is currently exploring the adjacent deposit so that they could increase the current mine life span of 15 years to 25 years. 	
Concerns		
	<ul style="list-style-type: none"> Mr. Muyano, ZEMA Principal Inspector, expressed concern that Mwembeshi was conducting further exploration work which is not good as more damage would be done to the natural environment. He said it would have been good if they had done all the exploration at once. He complained that ZEMA was not even aware of the second exploration phase. <ul style="list-style-type: none"> <i>Dennis explained that the deposit that was being explored came to their knowledge as they undertook the first exploration which showed that the ore in the area was in a U-shaped formation. They had to temporary stop exploration as a result of the crisis. He told the meeting that permission had been sought for the second phase of the exploration works and feasibility study. The programme of work had been circulated to all stakeholders including ZEMA.</i> The ZEMA official wanted to know the relation between Zambezi and Mwembeshi 	

	<p>Resources.</p> <ul style="list-style-type: none"> – <i>He was told that Mwembeshi is a wholly owned subsidiary of Zambezi Resources.</i> ▪ ZEMA told Mwembeshi Resources that their project lies in a very sensitive place and therefore they should provide as much information as possible to stakeholders on every step that they take. The burden of proof on whether or not the project is feasible lies with the company. There are a number of concerned parties considering that the Project lies in the LZNP. Already concerns have been raised at IUCN alleging that the project would affect the Mana Pools National Park in neighbouring Zimbabwe which is a heritage site. <ul style="list-style-type: none"> – <i>Mwembeshi Resources indicated that it was taking every precaution possible to ensure that all risks involved with the mine are minimised. It intends to use modern mining techniques suitable for that environment. The Company has planned to give comprehensive training to its workers on how to operate in the Park. Some workers would be sent to the Kruger National Park in South Africa which has more than one mine in it so that they can learn how the mine and park co-exist.</i> – <i>The mine is encouraging stakeholders to visit exploration site to see for themselves what is really on the ground. So far, ZAWA has made an impromptu visit to the site and they found that there was no unwarranted cutting down of trees and grading of the park as had been reported. One rarely sees a wild animal near the proposed mine site.</i> – <i>Mwembeshi also mentioned that it had planned some study visits for selected key stakeholders to the Kruger so that they can have firsthand experience of how the park and mines co-exist.</i> – <i>Other plans include assisting ZAWA with the safe guarding the park and starting up a restocking programme for depleted species</i> 	
	Conclusion	
	<ul style="list-style-type: none"> ▪ ZEMA ended the meeting with an appeal to Mwembeshi to keep all stakeholders well informed on all the processes they are undertaking so that people do not make un-informed judgements on the project. GeoQuest on the other hand were told to objectively undertake their EIA work and not to massage the results of their baseline studies. 	
	Attendance	
1.	Ulf Pettersson – GeoQuest	
2.	Adrian Shikwe – GeoQuest	
3.	Frederick Muyano - ZEMA	
4.	Dennis Mwanza – Mwembeshi Resources/Zambezi Resources	

Wednesday 18 May 2011: Meeting with Chongwe District Council		
Background brief		Comments
	<ul style="list-style-type: none"> ▪ The meeting was started by Adrian Shikwe who introduced the purpose of the meeting as being part of the EIA process which GeoQuest has been contracted to undertake on behalf of Mwembeshi Resources. The social impact analysis involves gathering of stakeholder concerns and possible benefits regarding the project. ▪ Mwembeshi Resources presented an update on the activities that are taking place before the mine could be fully operational. ▪ Mr. Mumba, Council Secretary, told the meeting that the Council was well aware of the Project and were hopeful that it commences soon so that Chongwe could start seeing the benefits such as creation of employment opportunities and contribution of the mine to the development of the district. 	
Concerns		
	<ul style="list-style-type: none"> ▪ The Council told the meeting that it shares some concerns with the general public regarding the sensitivity of the mine location and urged that the Company works closely with ZAWA. <ul style="list-style-type: none"> – <i>Mwembeshi responded that they were taking every possible precaution to ensure that they did not significantly change the ecosystem of the Park. They have engaged with ZAWA and hope to work together throughout the project life.</i> ▪ The other concern that the Council brought out was that the mine did not intend to set up a refinery in the area hence some jobs which would have been created in the area would go to other places where value addition would be done. <ul style="list-style-type: none"> – <i>They were told that the setting up a refinery requires certain quantities of deposits to be economical. The deposits at Chakwenga are not sufficient to call for the setting up of a refinery. Nonetheless, ore would not be sent to refineries as mere rocks on trucks, but it would be processed to the level like that which is done in most new mines in North Western Province.</i> 	
Conclusion		
	<ul style="list-style-type: none"> ▪ The Council Secretary ended the meeting by thanking the Company and its Consultants for coming through and updating them on the Project progress and taking their concerns. He said that he looked forward to the project taking off so that benefits could start to accrue to the people of Chongwe and the nation at large. 	
Attendance		
1.	E. N. Mumba – Chongwe District Council – Council Secretary	
2.	Laura Mulenga – Chongwe District Council – Director of Works	
3.	Adrian Shikwe – GeoQuest Limited	
4.	Dennis Mwanza – Mwembeshi Resources/Zambezi Resources	

Annex IV: Affidavit for the court appeal by the civil society organisations

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY

2014/HP/

IN THE MATTER OF: THE ENVIRONMENTAL MANAGEMENT ACT 2011

AND

IN THE MATTER OF: THE LOWER ZAMBEZI NATIONAL PARK, KANGALUWI EIA

BETWEEN:

ZAMBIA COMMUNITY BASED NATURAL RESOURCE MANAGEMENT FORUM	1 st APPELLANT
ZAMBIA INSTITUTE OF ENVIRONMENT MANAGEMENT	2 nd APPELLANT
ZAMBIA CLIMATE CHANGE NETWORK	3 rd APPELLANT
CHALIMBANA RIVER HEAD WATERS CONSERVATION TRUST	4 th APPELLANT
GREEN LIVING MOVEMENT	5 th APPELLANT
DAVID NGWENYAMA	6 th APPELLANT

AND

ATTORNEY GENERAL

1st RESPONDENT

MWEMBESHI RESOURCES LIMITED

2nd RESPONDENT

**AFFIDAVIT IN SUPPORT OF EX PARTE SUMMONS TO STAY THE DECISION TO ALLOW
LARGE SCALE MINING ACTIVITIES IN THE LOWER ZAMBEZI NATIONAL PARK**

I **VINCENT ZIBA** of House No. 1846B, Chelstone, Lusaka in Lusaka Province of Zambia **MAKE OATH** and **SAY** as follows:-

1. That my full name is as stated above.
2. That my Nationality is Zambian.
3. That I am the National Coordinator of the 1st Appellant as such have authority to make this affidavit.
4. That on the 10th day of May, 2012 the 1st Appellant sent an objection to the proposed Large Scale Mining Project by Mwembeshi Resources

Limited to the Zambia Environmental Management Agency (ZEMA). I now exhibit the said letter marked " VZ1 ".

5. That the 1st Appellant also sent a copy of its Policy Advisory Note on the Proposed Kangaluwi Large Scale Copper Mining Project in the Lower Zambezi National Park a copy is hereby exhibited and marked "VZ 2".
6. That the Zambia Environmental Agency called for public hearing meetings on the said proposed Kangaluwi Mining Project which was held between 16 and 18th June, 2012 and the report on the said public hearing was made on the 24th June, 2012 and given to the stakeholders. I produce the said report and mark it " VZ 3".
7. That on the 5th day of September 2012 the Zambia Environmental Agency wrote to the 2nd Respondent Mwembeshi Resource Limited informing them that the environmental impact statement had been rejected. I exhibit a copy of the said letter and mark it "VZ 4".
8. That on the 29th day of November, 2013 the Zambia Environmental Agency Board recommended to the Minister of Lands, Natural Resources and Environmental Protection recommending to him that the decision to reject the application for the proposed Kangaluwi Mining Project by Mwembeshi Resources be upheld.
9. That the Appellants were aggrieved when the Minister of Lands, Natural Resources and Environmental Protection decided to let the 2nd Respondent to Proceed with the mining project hence this appeal against the said ministerial decision.
10. That it is therefore necessary that the decision made by the Honourable Minister be stayed pending the hearing of the appeal of this Court.
11. That if the stay of the Honourable Minister's decision is not granted the appeal is going to be an academic exercise as the 2nd Respondent will proceed with its mining activities in the National Park.

12. That the mining activities proposed by the 2nd Respondent will damage the environment and will be a danger to the surrounding areas as highlighted in the documents exhibited.
13. That the stay of the Honorable Minister's decision will not be prejudicial to the Respondents as the land in question will remain intact.
14. That it is only fair and proper that the Appellants be heard without the Respondents destroying the subject matter.
15. That I make this affidavit with full support and authority from all the Appellants.
16. That I depose to this my affidavit believing its contents to be true and correct to the best of my knowledge.

SWORN by the said

VINCENT ZIBA

at Lusaka this day of

)
)
2014)

BEFORE ME:

COMMISSIONER FOR OATHS.

2014/HP/

IN THE HIGH COURT FOR ZAMBIA
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AND

ATTORNEY GENERAL

MWEMBESHI RESOURCES LIMITED

1ST RESPONDENT

2ND RESPONDENT

CERTIFICATE OF EXHIBITS

This is to certify that these are the exhibits shown to me in the Affidavit of
VINCENT ZIBA marked "VZ1", "VZ2", "VZ3", "VZ4" respectively.

BEFORE ME:

COMMISSIONER FOR OATHS.

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY

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2ND RESPONDENT

**AFFIDAVIT IN SUPPORT OF EX PARTE SUMMONS TO STAY THE DECISION TO ALLOW
LARGE SCALE MINING ACTIVITIES IN THE LOWER ZAMBEZI NATIONAL PARK**

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