REVIEW OF NATIONAL LAWS & POLICIES THAT SUPPORT OR UNDERMINE INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

ZIMBABWE

NATURAL JUSTICE

FORDFOUNDATION

"Land is the foundation of the lives and cultures of Indigenous peoples all over the world… Without access to and respect for their rights over their lands, territories and natural resources, the survival of Indigenous peoples' particular distinct cultures is threatened."

Permanent Forum on Indigenous Issues
Report on the Sixth Session
25 May 2007

This review is a work of many hands.

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Date: December 2014

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ACRONYMS

ABS	Access and Benefit Sharing
AREX	Agricultural Rural Extension
ARIPO	Africa Regional Intellectual Property Organisation
CAMPFIRE	Communal Area Management Programme for Indigenous Resources
CBD	Convention on Biological Diversity
CBNRM	Community Based Natural Resource Management Programmes
CBO	Community Based Organisation
CCDT	Chiadzwa Community Development Trust
CHIEHA	Chibememe Earth Healing Association
DDF	District Development Fund
EIA	Environmental Impact Assessment
EMA	Environmental Management Agency
EPO	Exclusive Prospecting Order
FPIC	Free, Prior and Informed Consent
GEF SGP	Global Environment Facility Small Grants Programme
GLTFCA	Great Limpopo Transfrontier Conservation Area
GOZ	Government of Zimbabwe
GR	Genetic Resources
ICESCR	International Covenant on Economic, Social and Cultural Rights
IUCN	International Union for Conservation of Nature
IKS	Indigenous Knowledge Systems
MAB	Mining Affairs Board
MAT	Mutually Agreed Terms
NEP	National Environment Policy and Strategies of 2009
RDC	Rural District Council
RMC	Resource Management Committees
SADC	Southern African Development Community
SAFIRE	Southern Alliance for Indigenous Resources
TBNRM	Transboundary Natural Resources Management
WRMS	Water Resources Management Strategy
ZELA	Zimbabwe Environmental Law Association
ZFC	Zimbabwe Forestry Commission
ZINWA	Zimbabwe National Water Authority
ZPWMA	Zimbabwe Parks and Wildlife Management Authority

INTRODUCTION

This review provides a holistic review of Zimbabwe's laws and policies relating to the recognition of indigenous peoples' and local communities' rights, including identification of the legal and policy measures and mechanisms that are useful in each context and the impact of these rights by natural resource exploration and extraction, large-scale agricultural land use and infrastructure and/or development projects. It is intended to help the reader to understand the ways in which different legal and institutional arrangements either support or undermine those rights. It also explores strategies for promoting community participation in the management of these resources and in the local and national development process. The review covers the following key sectors and thematic area:

Part I - Country, Communities, Indigenous peoples and local communities' rights;
Part 2 - Human Rights;
Part 3 – Land, freshwater and marine laws and policies;
Part 4 - Protected Areas, Indigenous Community Conserved Areas (ICCAs) and Sacred Natural Sites;
Part 5 - Natural Resources, Environmental and Cultural Laws and Policies;
Part 6 - Natural Resource Exploration;
Part 7 - Non-Legal Recognition and Support;
Part 8 - Judgements;
Part 9 – Implementation;
Part 10 - Resistance and engagement; and,
Part 11 - Legal and Policy Reform.

For each thematic area, the report highlights relevant provisions of Zimbabwe's Constitution, as well as general environmental and sector specific laws and policies, as appropriate. Institutional arrangements for natural resources governance, ownership, use and access are also addressed. Case studies are provided for particular thematic areas. Please note that the original questionnaire (on which this review is based) also included an examination on laws and policies with respect to large-scale infrastructure/development projects and agriculture. These have not been addressed in here, however, because there are very little legislative frameworks dealing with these issues.

The review seeks to:

- Deepen understanding of the dynamics of environmental, cultural, and human rights law and policy as they relate to the local level, particularly with respect to the recognition of communities' rights and in the context of large-scale agriculture, natural resource exploration and extractive and infrastructure/development projects;
- Provide relevant and easily understood recommendations for local-level engagement with national laws and policies;
- Provide a resource for national policy recommendations in the future;
- Be used more widely by individuals and groups from or working with local and mobile communities on issues related to self-determination, governance, and customary sustainable uses of natural resources for a variety of purposes.

1. COUNTRY, COMMUNITIES & INDIGENOUS PEOPLES' AND LOCAL COMMUNITIES' RIGHTS

1.1 Country

Zimbabwe is situated in southern Africa, landlocked by Zambia to the north, Mozambique to the east, South Africa to the south, and Botswana to the west. Encompassing a total area of 390,757 sq.km, about 386,847 sq.km is land, and 3,910 sq.km is water. More than fifteen per cent of the total area is set aside for *in situ* conservation of forest and wildlife biodiversity; of that total, about 13% falls under Parks and Wildlife Estate (managed by the Zimbabwe Parks and Wildlife Management Authority), while 2% is classified as gazetted forest managed by the Forest Commission (Shumba 2003). Other wildlife areas are under private landholders like conservancies and wildlife farms.

The country is divided into five agro-ecological regions, defined by annual rainfall: the eastern highlands (rainfall above 1,000mm), north-eastern *highveld* (750-1000mm), midlands (500-750mm), and low-lying areas in the north (450-650mm) and south (below 650mm) (see Figure 1.1). Though rainfall patterns are unreliable, the climate is characterised by wet and dry seasons. The seasonal weather is highly influenced by distance from the equator and the country's main topographical features, that is, the *Highveld,* ranging from 1,200-1,500m; the eastern highlands ranging from about 2,600m; and the Zambezi and Limpopo river valleys, with altitudes of about 500m. The mean annual temperature varies from 18 C^0 in the *highveld* to 23 C^O in the *lowveld*.

Zimbabwe's population of 12.3 million people is growing at an annual rate of 2.5%, and is expected to double in about 23 years. The average population density is 27 people/sq.km. The Shona (82%) and the Ndebele (14%) are Zimbabwe's two main ethnic groups, with the remaining population consisting of the Chewa, Shangani, Chibarwe, Khoi-San, Nambya, Sotho, Tonga, Tswana, Venda, and Xhosa. The **Constitution of Zimbabwe Amendment No. 20 Act 2013** (hereafter the **Constitution**) recognises the following official languages: Chewa, Shangani, Shona, Ndebele, Chibarwe, Kalanga, Khoisan, Nambya, Ndau, Sotho, Tonga, Tswana, Venda and Xhosa. Other minority languages such as the Pfumbi spoken by the Pfumbi people of the Mwenezi District, and Sangwe spoken by the Gudo people of Chiredzi District in south-eastern Zimbabwe, are excluded.

Contributing 15% of Zimbabwe's GDP and employing 70% of the population, agriculture is the backbone of the Zimbabwean economy. Main cultivated crops include grain (maize, sorghum), protein-based crops, and cash crops (sugar cane, tobacco, and cotton). Cultivated crops cover 27% of the country. Other large-scale, agro-based industries include primary processing, dairy, tea production, and horticulture. Small-scale industries include primary processing, cross-border trading, mining, transport and earthmoving, and financial markets. Tourism is the fastest growing industry in Zimbabwe, contributing 13% of the GDP.

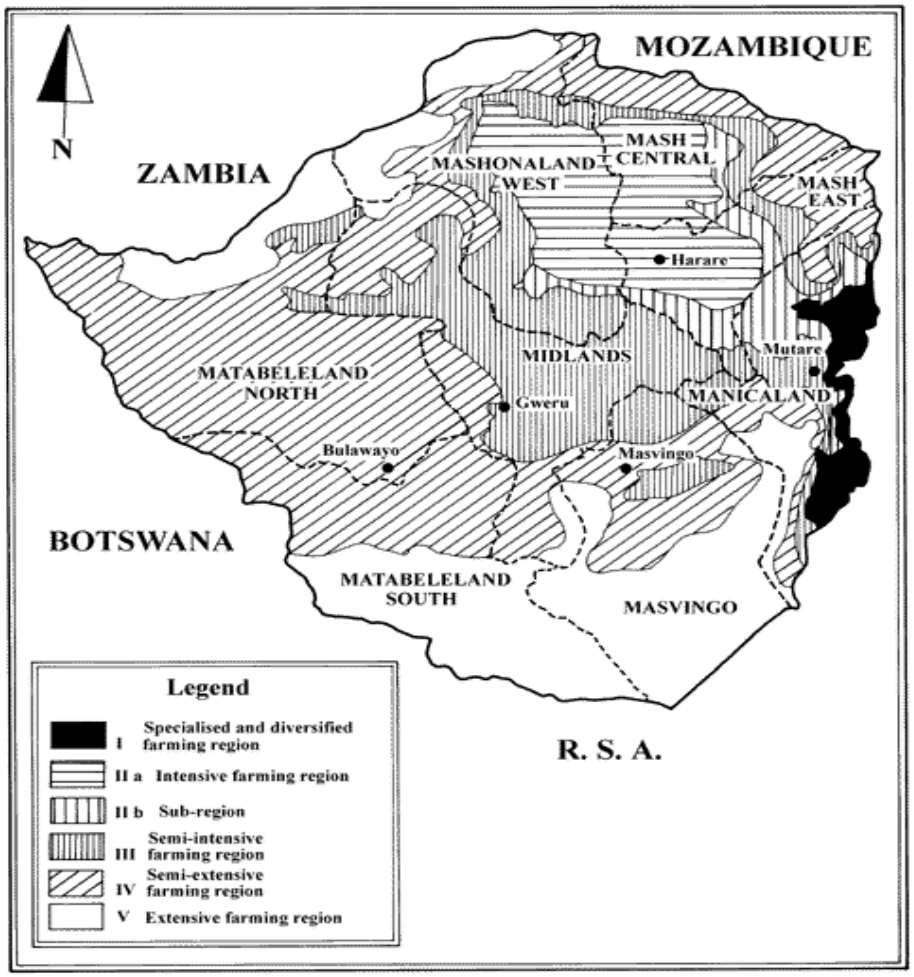

Figure 1.1: Agro-ecological regions of Zimbabwe

1.2 Communities and Environmental Change

1.2.1 Indigenous Peoples, Local Communities and Livelihood Strategies

(i) Definition of "Indigenous"

The term "indigenous" does not have the same definition in Zimbabwe as it does in international law. In Zimbabwe, people of southern African descent whose predecessors were in the country prior to 1890 are considered indigenous Zimbabweans. The **Constitution** does not make reference to indigenous peoples or indigenous communities except incidentally in Chapter 15, paragraph 295(1), where it states: "Indigenous Zimbabwean", but does not define the term. According to **Statutory Instrument 61 of 2009 (Access to Genetic Resources and Indigenous Genetic Resource-based Knowledge) Regulation**, an indigenous community is "a community of persons that has inhabited Zimbabwe continuously since before the year 1890 and whose members share the same language or dialect or the same cultural values, traditions or customs."

In international law, however, the UN human rights system has set out a number of broad characteristics that support the identification of Indigenous Peoples worldwide. These characteristics include self-identification as indigenous peoples; historical continuity with

pre-colonial and/or pre-settler societies; strong links to territories and surrounding natural resources; distinct social, economic, or political systems, language, culture, and beliefs from non-dominant groups of society; and a resolve to maintain and reproduce ancestral environments and systems as distinctive peoples and communities (UN Permanent Forum on Indigenous Issues Factsheet 1). As per these characteristics, a very small population of Indigenous Peoples exist in Zimbabwe, including a small population of Khoi-San in the south.

(ii) Definition of "Local Communities"

Though the **Constitution** acknowledges the existence of local communities (Chapter 2, paragraphs 13.4, 18.12, and 33), the only definition of "local communities" or "communities" in Zimbabwean law is found in Article 1 of the **Treaty on the Establishment of the Great Limpopo Transfrontier Park** (2002) (GLTP), where "communities" are defined as: "… groups of people living in and adjacent to the area of the Great Limpopo Transfrontier Park, bound together by social and economic relations based on shared interest."

Local communities in Zimbabwe exhibit most of the characteristics cited in the Convention on Biological Diversity's Expert Group Meeting of Local Community Representatives Recommendations on the Common Characteristics of Local Communities (see Box 1.1 below). That is: self-identification; social cohesion; willingness to be represented as a local community; traditional knowledge transmitted from generation to generation including in oral form; shared common property over land and natural resources; lifestyles linked to traditions associated with natural cycles, the use of and dependence on biological resources, and the sustainable use of nature and biodiversity; among others.

Local communities in Zimbabwe have their own tribal and traditional governance systems headed by chiefs (*Mambo*), headman (*Sabhuku*), and village heads (*Sabhuku*). However, some modern administrative systems such as Wards, Ward Development Committees, and community-based organisations (trusts) are also considered legitimate governance structures for local communities.

Local communities are identified by social cohesiveness. People belonging to the same local community are often easily recognised by their identification with a cluster of totems and traditional practices (including rituals and rites) linked to that particular community.

This legal review focuses on the national laws that support or hinder the rights of local communities, as outlined above.

(iii) Livelihood Strategies of local communities

More than sixty-nine per cent of Zimbabwe's population lives in rural areas and are highly dependent upon the land and biodiversity for livelihoods. The livelihood strategies used by local communities in Zimbabwe can be divided into four categories: rural farming communities or small-holder farmers, riverine and fishing communities, livestock keepers, and resettled A1 farming communities[1] (Table 1.1). The lifestyles and practices of these communities differ depending on location (i.e., riverine, forest, grassland, or highland).

[1] Resettled A1 and farming communities were resettled under Zimbabwe's "Fast-track Land Reform" process.

Table 1.1: Local communities in Zimbabwe as defined by livelihood strategies

Type of local community	Description of location	Location in Zimbabwe
Rural farming communities or small-holder farmers	Crop-growing areas suitable for arable farming	Scattered throughout Zimbabwe
Riverine and fishing communities	River and large fresh water sources	Rivers, dams, and lakes around the country
Livestock keepers	Dry land with veld	Drier regions, including the south-east *lowveld* and Matabeleland
Resettled A1 and A2 farming communities	Resettlement areas	Resettlement areas throughout the country

Box 1.1: Expert Group Meeting of Local Community Representatives Recommendations on the Common Characteristics of Local Communities *[Source: Secretariat of the Convention on Biodiversity (2011)]*

- Self-identification as a local community;
- Lifestyles linked to traditions associated with natural cycles, the use of and dependence on biological resources, and the sustainable use of nature and biodiversity;
- The community occupies a definable land traditionally occupied and/or used permanently. These lands are important for the maintenance of social, cultural, and economic aspects of the community;
- Traditions, common history, culture, language, rituals, and customs, which are dynamic and may evolve;
- Traditional knowledge/innovations/practices associated with the sustainable use & conservation of biological resources;
- Social cohesion and willingness to be represented as a local community;
- Traditional knowledge transmitted from generation to generation including in oral form;
- A set of social rules that regulate land conflicts and sharing of benefits;
- Expression of customary and/or collective rights;

- Self-regulation by customs and traditional forms of organisation and institutions;
- Performance and maintenance of economic activities traditionally, including for subsistence, sustainable development, and/or survival;
- Spiritual and cultural values of biodiversity and land;
- Culture, including traditional cultural expressions captured through local languages, highlighting common interest and values;
- Sometimes marginalised from modern geopolitical systems and structures;
- Biodiversity often incorporated into traditional place names;
- Foods and food preparation systems and traditional medicines are closely connected to biodiversity/environment;
- May have had little or no prior contact with other sectors of society resulting in distinctness, or may choose to remain distinct;
- May live in extended family, clan, or tribal structures;
- Belief and value systems, including spirituality, are often linked to biodiversity;
- Shared common property over land and natural resources;
- Traditional right-holders to natural resources;
- Vulnerability to outsiders and little concept of intellectual property rights.

1.2.2 Drivers of biodiversity loss and land and resource appropriation

Zimbabwe's social and economic development depends on its biodiversity and associated natural and agro-ecosystems. The key economic sectors of agriculture, mining, industry, energy, and tourism are all dependent on the natural environment. Sixty-five per cent of the population derives its livelihood from agriculture and/or biodiversity (draft National Biodiversity Strategies & Action Plans (NBSAP) 2014), and both rural and urban populations depend on the natural environment for their livelihoods and wellbeing.

Human activities represent the major threat to natural ecosystems and driver of biodiversity loss in Zimbabwe. Activities include deforestation, land degradation, wildfires, loss of habitat, mining, road construction activities, land-use conflicts, invasive alien species, and pollution (Government of Zimbabwe 2010). In the past decade, climate change – as seen in the frequency of devastating droughts and floods – is an additional and increased threat to biodiversity loss (see Table 1.2 for more detail).

Table 1.2: Threats to Biodiversity and Underlying Causes (Source: NBSAP draft (2014))

Critical Threat	Underlying Causes	Results
Land-use changes	Expansion of urban centres, mining, infrastructure development, agriculture expansion, and illegal settlements/encroachment	Habitat fragmentation, habitat loss, reduced ecosystem services, and reduced human wellbeing
Habitat Loss	Conversion of natural habitat to agriculture, expansion of urban settlements, unsustainable land management resulting in land degradation, uncontrolled wild fires,	Biodiversity loss, increased human wildlife conflict

	water abstraction and pollution, increased prospecting and mining activities	
Climate Change Impacts	Changes in temperature and rainfall lead to increased floods and droughts resulting in changes in species composition, ranges, densities and growth rates, increased species migration, increased frequency and intensity of forest fires resulting in loss of vegetation cover and biodiversity, increased reliance on natural resources (trees and forests) for livelihoods resulting in overexploitation, decreasing water availability and quality	Species extinction of already threatened species, increased vulnerability for species with low productivity and population numbers, restricted and patchy habitats, limited ecosystem ranges
Pollution	Urban expansion, mining, energy generation, transport, fires, unsustainable land management practices, industrialisation (especially small to medium enterprises), limited solid waste management strategies	Carbon emissions, habitat loss, reduced access to clean water and sanitation, eradication of ecosystems (especially freshwater systems like wetlands and rivers)
Invasive Alien Species	Lack of proper framework on regulation, enforcement and control (eradication)	Species loss (especially of indigenous biodiversity) and ecosystem breakdown
Unsustainable Natural Resource Exploitation	Major over-exploitation of trees for tobacco curing and commercial firewood markets in urban centres due to limited grid electricity accessibility and economic challenges, limited access and benefit sharing for local communities' results in poaching, unfavourable agriculture outputs and market prices result in unsustainable harvesting of natural resources as alternative income source, large-scale illegal ivory market	Deforestation causing land degradation reduced ecosystems services to local communities, increase in uncontrolled fires resulting in biodiversity loss

1.2.3 Threats to cultural and linguistic diversity

There are a number of major threats to cultural and linguistic diversity. Threats include:

- Urbanisation: Some rural areas in Zimbabwe are urbanising very rapidly due to improved transport, which allows immigration and outmigration, which in turn leads to cultural exchange and dilution.
- Education: Education has contributed to a growing negative attitude among Zimbabwean youth towards local cultures and languages. Curricula are based on a western value system that trivialises and stigmatises traditional knowledge.
- Religion: Institutionalised religion has, to a great extent, portrayed African culture as archaic, superstitious, and unholy. This has resulted in people dissociating themselves from initiatives that have links with local culture, such as sacred places.

1.2.4 Initiatives to conserve and sustainably use biodiversity

Local communities across Zimbabwe are involved in conservation and development projects, some with the support of the state, private sector, and non-governmental organisations, and are classified as Community Based Natural Resource Management Programmes (CBNRM). The Global Environment Facility Small Grants Programme (GEF SGP), the Southern Alliance for Indigenous Resources (SAFIRE), and the Communal Area Management Programme for Indigenous Resources (CAMPFIRE) are among the best-known CBNRM programmes, with thousands of communities benefiting (see Figure 1.2).

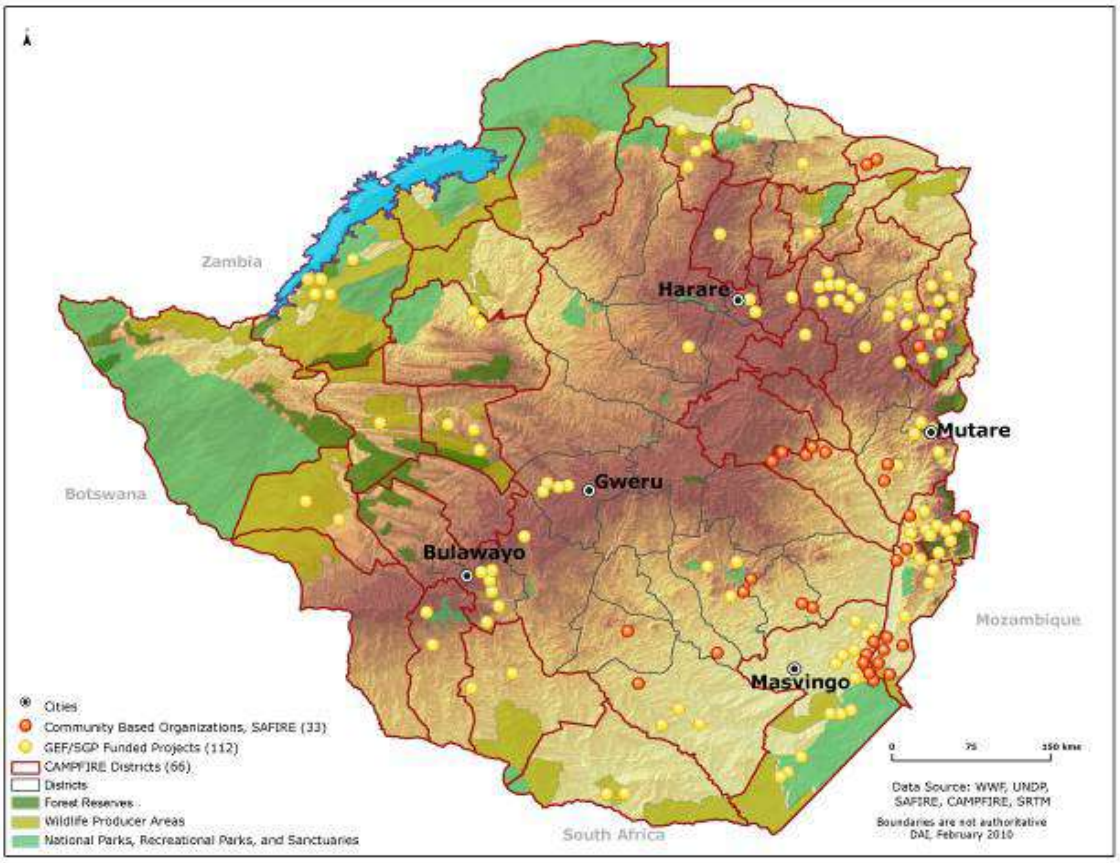

Figure 1.2: Local communities' conservation projects supported by the GEF SGP, the SAFIRE and CAMPFIRE. Source: Mazambani (2010)

2. HUMAN RIGHTS

After gaining independence from the British in 1980, Zimbabwe sought to redress past policy and law injustices through a review of its human rights framework.

2.1 Human rights laws or policies that support or hinder local communities' rights in relation to natural resources

In post-independence Zimbabwe a number of laws and policies that promote and recognise local community rights in natural resources governance have been promulgated. The human rights framework is underpinned by the desire to meet the needs and interests of all people who live in Zimbabwe. The existing laws and policies can be analysed at the international, regional, and national levels.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is the primary international legal framework impacting on the national legislative regime in Zimbabwe. It is an international instrument that sets out the international standards relevant to economic, social and cultural rights worldwide. However, the Government of Zimbabwe has also signed up to a number of other international legal instruments, including the **International Covenant on Civil and Political Rights,** the **Convention on the Elimination on all Forms of Discrimination Against Women,** the **Convention on the Elimination of all Forms of Racial Discrimination**, and the **Convention on the Rights of the Child**. A number of the articles in these international instruments are reflected in the new Zimbabwean Constitution.

Regionally, Zimbabwe has adopted the **African Charter on Human and Peoples Rights of 1981**. The African Charter provides for the protection of economic, social, and cultural rights, with due regard to freedom and identity and in the equal enjoyment of the common heritage of mankind. In addition, the African Charter provides in Article 21(1) that: "All peoples shall freely dispose of their wealth and natural resources... In no case shall a people be deprived of it".

At the national level, a number of laws and policies exist to promote and protect human rights in Zimbabwe. The **Constitution** is the supreme law of the country, defining citizens' basic and fundamental rights, including those over natural resources. Adopted on the 22nd of May 2013, the new **Constitution** makes provisions for environmental rights and their judicial enforcement, in a manner similar to that of civil and political rights, and economic, social, and cultural rights. In this regard, the new **Constitution** was a welcome departure from the Lancaster House Constitution of 1979, which neither provided for these rights, nor their judicial enforcement.

More specifically, **Section 73 of the Constitution** states that every person has the right to an environment that is not harmful to their health and wellbeing, and to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation, and promote conservation (**Section 73(1)(a) and (b)(i)(ii)**). In theory, this provision offers redress to communities that have suffered pollution and environmental degradation. While the right is couched as an individual right, it can be argued that it applies to groups as well, as pollution and environmental degradation do not affect an individual only, but also affect the whole group or community.

Section 73 is the only section of the Constitution that speaks about environmental rights as human rights. However, both the **National Environmental Policy and Strategies of 2009** and the **Environmental Management Act** reference environmental rights as human rights. These are dealt with in detail below.

Such environmental rights are very important, as they protect communities from the negative impacts of natural resource extraction, such as mining and forestry. Environmental protection is an integral component of community development and sustainable development; one of the biggest problems that local communities have faced is the violation of their environmental rights as a result of environmental pollution and land degradation due to natural resource extraction.

A number of other domestic legal instruments support human rights in Zimbabwe. These include:

- Environmental Management Act (Chapter 20:27)
- Indigenisation and Economic Empowerment Act (Chapter 14:33)
- National Environmental Policy and Strategies of 2009
- Environmental Management (Access to Genetic Resources and Indigenous Genetic Resources Based Knowledge) Regulations
- Communal Land Act (Chapter 20:04)
- Rural District Councils Act (Chapter 29:12)
- Mines and Minerals Act (Chapter 21:05)
- Communal Land Forest Produce Act (Chapter 19:04)
- Forest Act 1949 (Chapter 19:05)
- Traditional Leaders Act (Chapter 29:17)

The above national laws and policies are all expanded on below.

2.1.1 Self-determination, self-governance and connection with local communities' governance of territories, areas or natural resources

There is no clear and direct right to self-determination or self-governance reflected in Zimbabwean law. However, **Chapter 2 of the Constitution** sets out **National Objectives**. These guide the State and all institutions and agencies of government in their formulation and implementation of laws and policies that should result in the establishment, enhancement, and promotion of a sustainable, just, free, and democratic society (**Constitution, Section 8(1)**). **Section 13(2)** of the Constitution requires that the State and its institutions must "involve the people in the formulation and implementation of development plans and programmes that affect them". In addition, **Section 13(3)** requires that such measures "protect and enhance the right of the people, particularly women, to equal opportunities in development".

These sections above can be interpreted as promoting the rights of local communities in natural resources governance, given that it is not possible to achieve a sustainable, just, free, and democratic society without communities as key stakeholders. To ensure that communities living in natural-resource rich areas are key beneficiaries of those resources, the **Constitution** sets out a number of very progressive provisions regarding benefit sharing.

These provisions require the state to ensure that local communities benefit from the resources exploited in their areas (**Constitution, Section 13(4)**). This is further buttressed by the requirement that all State institutions and associated agencies take practical measures to ensure that all local communities have access to resources to promote their development (**Section 18(2) of the Constitution**).

The overarching environmental law and regulatory framework on environmental issues in Zimbabwe is the **Environmental Management Act (Chapter 20:27) of 2002, 2006 amendment**. It establishes the Environmental Management Agency (EMA) that administers it, and its objectives are to provide for the sustainable management of natural resources and protection of the environment; the prevention of pollution and environmental degradation; the preparation of a National Environment Plan and other plans for the management and protection of the environment. The **EMA** takes precedence over other laws that are in conflict or inconsistent with, as per **Section 3 of the EMA**.

Section 4(1) of the EMA provides for environmental rights and principles of environmental management. These rights include the right to live in a clean environment that is not harmful to health; access to environmental information; protection of the environment for the benefit of present and future generations; participation in the implementation of legislation and policies that prevent pollution, environmental degradation, and secure ecologically sustainable management and use of natural resources while promoting justifiable economic and social development. All these rights promote the recognition of community rights and their participation in natural resources protection and management.

2.1.2 Participation and Consultation

In addition to the provisions in the **Constitution** set out above, **Section 4(2) of the EMA Act** sets out "General Principles of Environmental Management" that apply to the activities of all people and government departments in environmental management. These General Principles highlight the need for community participation and acknowledge that:

a) All elements of the environment are linked and environmental management must be integrated;
b) People and their needs should be put at the forefront of environmental management;
c) All people should participate in environmental management;
d) Communities must be made aware of environmental aspects through environmental education, awareness raising, sharing of knowledge and experience. This will build capacity to participate in environmental management, thereby leading to sustainable development;
e) Development must be socially, environmentally, and economically sustainable;
f) Negative impacts on the environment and people's rights that are anticipated should be prevented and where it is not possible to prevent them, they should be minimised and remedied;
g) Any person who causes pollution or environmental degradation shall meet the cost of correcting such environmental pollution and degradation.

In addition, **Section 87 of the EMA Act** provides for the establishment of a National Environmental Plan where, as part of its preparation, the Minister is required to carry out

consultations (Section 87(2)(a)). This provision provides a mechanism for public participation by affording the consultations of various authorities, agencies, and persons during the preparation of the National Plan, which will formulate strategies and measures for the management, protection, restoration, and rehabilitation of the environment and can be interpreted to include communities. As of the time of writing, a plan has been drafted and is undergoing a periodic review process.

Sections 97, 98, and 99 of the EMA Act makes provision for an Environmental Impact Assessment (EIA) to be carried out before the implementation of certain projects listed in the 1st Schedule (including projects involving Forestry, Mining and Quarrying, and Infrastructure Development). An EIA provides an opportunity for communities to be consulted on how projects and/or developments are likely to impact their livelihoods and the relationship they will have with the resource found in their localities – either positively or negatively. When properly conducted, EIAs can provide a mechanism for community involvement in the policy and decision-making processes of natural resources management. However in reality, participation by community representatives is often limited.

Despite the indigenisation and economic empowerment crusade epitomised through the implementation of the **Indigenisation and Economic Empowerment Act (Chapter 14:33)**, communities have complained that they are being marginalised from decision-making processes in areas where natural resources are being extracted by the economic and power elites in the country (Zimbabwe Environmental Law Association 2013; Transparency International Zimbabwe 2012). Marginalisation is in the form of a lack of information and consultation. Indeed, the problems and misunderstandings that have arisen in areas where natural resources are exploited are often the result of failure to consult local communities.

The **Constitution** requires the State and its institutions and agencies to ensure that adequate and appropriate measures are taken to empower all previously or historically disadvantaged persons, groups, and communities in Zimbabwe (**Section 14(1)**. If properly implemented, this requirement will allow communities to participate rather than act as passive observers of development. In addition, **Section 68(1) of the Constitution** makes provision for administrative justice by stating that "every person has a right to administrative conduct that is lawful, prompt, efficient, reasonable, appropriate, impartial, and both substantively and procedurally fair". Although not specifically expressed, this right implies the right to be consulted, as administrative conduct cannot be reasonable and fair in the absence of consultation in decisions affecting communities. This provision can also be interpreted to loosely encapsulate the principle of Free, Prior Informed Consent (FPIC).

The **National Environmental Policy and Strategies of 2009** contains policy objectives and key policy principles that promote community participation in natural resources management. **Section 2.3.1** provides for the promotion of equitable access to and sustainable use of natural and cultural resources with an emphasis on satisfying basic needs, improving standards of living, enhancing food security, and reducing poverty. Equitable access to natural resources is a key concern to communities living in natural resource-rich areas, as sustainable use of natural and cultural resources cannot be achieved without the participation of local communities. Furthermore, it calls for sustainable development by optimizing the use of energy and resources, and minimising irreversible environmental damage, waste production, and pollution, through incorporating provisions for

environmental assessment and management in all economic and development activities as set out in **Section 2.3.4**. If properly done, environmental assessments include the participation of all interested and affected stakeholders such as local communities.

2.1.3 Culture and Indigenous Knowledge Systems (IKS) rights

There are a number of laws that protect the right to culture, IKS, and traditional institutions. These, in turn, play a very important role in natural resource management. The new **Constitution** provides for State institutions and agencies of government to promote and respect cultural values and practices so as to enhance the dignity and equality of Zimbabweans as set out in **Section 16(1) of the Constitution**: "The State and all institutions and agencies of government at every level, and all Zimbabwean citizens, must endeavour to preserve and protect Zimbabwe's heritage". They are further required to preserve and protect Zimbabwe's heritage, which includes natural resources, and culture, as these are all important for the sustenance of local communities' livelihoods (**Section 16(2)**). In addition, they are required to ensure that there is "due respect for the dignity of traditional institutions" (**Section 16(3)**). The State is also required to take measures and steps to preserve, protect, and promote IKS, which includes knowledge of medicinal and other properties of plant and animal life possessed by local community and people (**Section 33**).

The **Environmental Management (Access to Genetic Resources and Indigenous Genetic Resources Based Knowledge) Regulations** (Statutory Instrument 61 of 2009) requires stakeholders (including communities) to be consulted where access to genetic resources is given to external parties, promoting community participation in the management of genetic resources. Consultation, which is a key aspect of good governance of natural resources, is strengthened by the requirement of Prior Informed Consent in Part 5.

Photo 2.1 Shangaan traditional community ceremony of women initiated into adulthood (2014). Source: Gladman Chibememe.

In addition, **Section 8 of the Environmental Management (Access to Genetic Resources and Indigenous Genetic Resource Based Knowledge) Regulations** sets out some very progressive provisions on access and benefit sharing of genetic and indigenous genetic resources. Communities are allowed to harvest, gather, collect, market, beneficiate, or exploit for gain genetic resources on a large or commercial scale. This creates an incentive for communities to participate in sustainable management of natural and genetic resources.

2.1.4 Basic right to food and water

The right to food and water are two particular forms of community rights affected by natural resource extraction. Extraction activities often cause loss of agricultural and grazing land, and pollution of water sources, as was evident in the Marange Diamond Fields, the black granite mining area of Mutoko, and the Great Dyke area, where gold, platinum, diamond, and chrome mining took place (Zimbabwe Environmental Law Association 2011; Zimbabwe Environmental Law Association 2012).

The State is required to take reasonable legislative and other measures within the limits of the resources available to it, to achieve the progressive realisation of these rights. Ideally, if a community's right to food and water is being violated as a result of loss of land and pollution of water, it can approach the courts for recourse for the breach of a constitutional right.[2] The State must take reasonable legislative and other measures, with the limits of the resources available to it, to achieve the progressive realisation of this right.

2.1.5 Evictions

Arbitrary eviction is one of the biggest human rights issues facing rural communities that are rich in natural resources such as minerals. In these situations, most rural communities live on communal land, regulated by the **Communal Lands Act of 1982** and **the Rural District Councils' Act (Chapter 20:04).** While communities have rights over communal lands (such as use rights), they do not own the land. Land is owned by the state, and once valuable resources like minerals have been found, communities can be evicted and relocated. This has been the Achilles heel of community rights.

However, **Section 74 of the Constitution** provides that no person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. This is a very progressive provision given that the mining sector is associated with massive community displacements without fair and adequate compensation. Across Zimbabwe, a number of communities have been arbitrarily displaced from their traditional homelands as a result of mining and infrastructure projects, including communities in Mutoko, where black granite mining takes place; and the Great Dyke, which stretches north to south for about 550km, with a width in some places of 11km. In particular, in the Marange Diamond Fields, an estimated 1,800 families have been relocated from their traditional homelands in Marange to Arda Transau, located on the outskirts of the town of Mutare. It is estimated that when the exercise of relocating people from the diamond fields is completed, it will have affected an estimated 4,300 to 4,500 households (Mbetsa 2013). These arbitrary evictions have all taken place without a court order and without households being paid fair and adequate compensation. **Section 74** makes it mandatory for due process to be followed, and places obligations on those responsible for evictions to provide alternative and better accommodation to those being evicted.

[2] ZELA has a case on water pollution, filed in 2012 against diamond mining companies in the Marange Diamond Fields. The case is currently pending in the courts. No determination has been made as yet.

2.2 State agencies mandated to develop and implement laws and policies

Depending on the legislative framework, a number of different State agencies and associated institutions are responsible for policy formulation and implementation of the laws and policies set out above.

With respect to environmental law and policies, both the **Environmental Management Act** and the **National Environmental Policy** provide for the establishment of agencies to develop and implement laws and policies that are supportive of local community rights. These include:

- Environmental Management Agency and an Environmental Management Board: established under Section 11 of the Environmental Management Act, the Board's composition is provided for under Section 12. It is made of a number of experts in areas such as environmental planning and management, environmental economics, ecology, pollution, waste management, and hazardous substances among others. The biggest drawback of the Board's composition is the lack of provision for an expert on community issues, even though communities are the most affected by the environmental issues the Environmental Management Board is expected to tackle.
- National Environmental Council: established under Section 7 of the Environmental Management Act, the Council's duties include advising on policy formulation and giving directions on the implementation of the EMA. A noted weakness of the National Environmental Council is that among the stakeholders who are able to participate–including government, academia, research institutions, civil society organisations, and the business community–communities are excluded.
- Ministry of Environment, Water, and Climate Change
- Parliamentary Portfolio Committee on Environment and Natural Resources.

3. LAND, FRESHWATER AND MARINE LAWS & POLICIES

Historically, land tenure in Zimbabwe has been contested, with the issue of land reform a driving force in the liberation war from 1964 to 1979. Given the centrality of land in addressing poverty and economic development, land tenure has dominated political and social discourse ever since. Land redistribution in Zimbabwe began after independence in 1980. However, the government's limited financial resources and inability to purchase land for resettlement stalled the process. The failure of the government to deliver land in the wake of continued land-hunger posed a challenge to the nation. By the late 1990s, the country was faced with a crisis in land use and land allocation, and sporadic land invasions and farm occupations by peasants from neighbouring communal areas were taking place in different parts of the country.

Spurred by demands from local communities on Svosve communal land, which, in 1998, were demanding equitable access and distribution of land, the **Fast Track Land Redistribution Programme** (and it's "Land Restitution Programme") was introduced in 2000. During this time, the community occupied commercial farms owned by white commercial farmers.

The country's Land Restitution Programme was a fundamental departure from the previous philosophy, practices, and procedures in acquiring land and resettling people (see Report Of The Presidential Land Review Committee On The Implementation Of The Fast Track Land Reform Programme, 2000-2002 ('The Utete Report'). The programme was instrumental in transforming the laws and policies governing land ownership in Zimbabwe, and under it, the government made huge advances in the development of the freehold land tenure system in Zimbabwe, especially with regards to the acquisition of agricultural land.

Since 2000, those with freehold tenure have been the least land secure and those with communal tenure the most secure (Zikhali and Dore 2007), demonstrating that no tenure system, whether freehold or communal, is absolute. The lessons in the last 10 years in Zimbabwe show vividly that tenure insecurity does not necessarily derive from the nature of the tenure regime, but from the wider political setting; that is, the capacity to administer land and the ability to ensure rule of law (Scoones 2009). Lacking very basic governance conditions, no tenure regime can ensure land security (Scoones 2009).

3.1 Legislation recognising forms of community title or tenure

Historically Zimbabwe has had various tenure systems that set out the rights of land-owners, occupiers, and settlers, recognised in a number of legislative and policy frameworks. The most notable land tenure systems in Zimbabwe currently are freehold tenure, communal land tenure, State land, and leasehold – or resettlement – tenure.

(i) Freehold land tenure

Freehold land tenure is based on private ownership of land. Property rights over land are relatively secure (compared to other forms of tenure), since one has title over the land and has rights and obligations over land to the exclusion of others. Historically, large-scale commercial farmers mostly held freehold land tenure.

(ii) Communal land tenure

Communal areas comprise 42% of Zimbabwe's land area, with as much as 75% of that area located in drought-prone agro-ecological regions (Moyo 2000). In 1999 over six million Zimbabweans lived on communal lands, mostly under **communal land tenure**. Communal land belongs to the State and is regulated by the **Communal Lands Act (Chapter 20; 04)**, passed as Act 20 of 1982. Under the **Communal Lands Act**, all communal land is vested in the President and managed on his behalf by rural district councils. The Rural District Council can allocate user rights over such land; in doing so it is to have regard for the traditional and customary use and allocation of such land, and to allocate it to the community that has traditionally and customarily used the land in question.

The **Communal Land Act** gives communities usufruct rights (rights of use), in respect to land for agriculture, housing, and pasture. In reality, however, the State holds de jure (legal) ownership over land in rural areas, while rural communities and individuals exert de facto (factual or on the ground) rights. As such, communal farmers do not have secure tenure, as the government owns the land. Those on communal land do not have title over the land and cannot sell it, mortgage the property, lease, or transfer the land since it does not belong to them. This situation leaves communities–especially communal farmers–vulnerable, as they may be displaced or evicted by the state.

(iii) Resettlement tenure system

Under the resettlement tenure system (a post-independence tenure system), the State leases land to individuals, enabling them to use it for agricultural and residential purposes. Some State land, such as parks and forest areas are protected and/or reserved for specific purposes. This type of system is usually combined with laws that do now allow communities or any person to trespass into the State land. Such laws include the **Forest Act (Chapter 19:05),** first passed in 1949, and the **Parks and Wildlife Act (Chapter 20:14)**, first passed in 1975. Many cases have been made by communities in Zimbabwe trying to occupy State parks and forest land, with claims that their ancestors were removed by colonial powers. However, these communities have been unsuccessful in reclaiming their land. Such cases include the occupation of Gonarezhou National Park by the Chitsa Community in Chiredzi, and the occupation of Mapfungabutsi Forest Reserve by local communities.

3.2 Specific provisions that recognise community territories

(i) Land

The **Constitution** contains various provisions on land rights, setting out the broad principles and values of the State on land. One of the founding principles that binds the State is in **Section 3(2)(j),** calling on the State to adhere to principles of good governance, especially the equitable sharing of national resources including land.

The **Constitution** contains a Declaration of Rights Chapter, setting out fundamental human rights and freedoms. Of interest to land issues is **Section 72**, which contains rights to agricultural land. Agricultural land is defined in **Section 72 (1), (a) and (b)** as: "land suitable for agriculture, that is to say for horticulture, viticulture, forestry, aquaculture, or for any purpose of husbandry, including the keeping or breeding of livestock, game, poultry, animals, or bees, or the grazing of livestock or game". This does not include Communal Land.

Section 72(2) empowers the State to compulsorily acquire agricultural land or any right or interest in agricultural land for public purposes such as settlement, land reorganisation, forestry, environmental conservation, or utilisation of wildlife or other natural resources, and relocation of persons. The land so acquired is vested in the State, which has full title.

Per **Section 72(3)(a)**, no compensation is paid by the State where agricultural land is compulsorily acquired, except for improvements on the land prior to acquisition. Further, no person may apply to a court for the determination of any question relating to compensation, except for compensation for improvements made on the land prior to the acquisition.

The **Constitution** outlines a number of factors that are considered before the compulsory acquisition of agricultural land for resettlement of people, in accordance with a land reform programme under **Section 72(7)(a), (b) and (c)**. These factors include: the unjust dispossession of people of their land during the colonial period; armed conflict over the land issue; and the reassertion of the rights of Zimbabweans over ownership of their land. The **Constitution** also articulates the burden of compensation for the compulsory acquisition of land on the former colonial power.

The **Constitution** sets out specific guiding principles on agricultural land in **Chapter 16**. **Section 289** articulates these principles, which are meant to redress the unjust and unfair pattern of land ownership brought about by colonialism, and bring about equitable access to land for all Zimbabweans, stating that "*Every citizen has a right to acquire, hold, occupy, use, transfer, hypothecate, lease, dispose of agricultural land; The allocation and distribution of agricultural land must be fair and equitable, having regard to gender balance and diverse community interests; No person may be deprived arbitrarily of their right to use and occupy agricultural land*". **Section 291** of the **Constitution** protects those people who occupied agricultural lands, entitled to use by virtue of a lease or agreement with the State, to continue using or occupying such agricultural land.

On security of tenure, **Section 292** states that the State must take appropriate measures (including legislative measures) to give security of tenure to every person lawfully owning or occupying agricultural land. The term "security of tenure" is not defined in the **Constitution**. However, **Section 293(1)** states that the State may alienate for value any agricultural land vested in the State either through transfer of ownership to any person or through the grant of a lease or other right of occupation or use. The State may not alienate more than one piece of agricultural land to the same person and his or her dependents. What this means is that the State may offer secure title over agricultural land under a private ownership arrangement to any person for a price or value. Arguably, it means the State may sell agricultural land. In practice, however, it is unlikely that poor local communities will be able to obtain agricultural land for any value, relegating them to continue using State land as they are currently doing, given they do not have funds to purchase land.

The **Constitution** provides for the establishment of the **Zimbabwe Land Commission** in **Section 296(1)**. The functions of the Zimbabwe Land Commission are to ensure transparency, fairness, and accountability in land administration; conduct periodic land audits; make recommendations to government on equitable access to and occupation of agricultural land, especially elimination of discrimination (particularly gender discrimination); advise government on systems of land tenure; and investigate and determine complaints and disputes regarding the supervision, administration, and allocation of agricultural land. The establishment of the Land Commission is critical for promoting equitable access to land for local communities. Currently, one of the major problems in the land sector is that a number of politicians have multiple farms and land, while many poor people do not have access to fertile land for agricultural activities. Thus, the performance of a land audit by the Land Commission is key in this regard. To date, the Land Commission has not yet been put in place to ensure the implementation of the Constitutional provision.

Customary norms are also recognised in the **Constitution**, and there is provision for the practice and respect of customary and cultural rights and practices. For example **Section 282** provides for the functions of traditional leaders and states that traditional leaders must administer communal land and protect the environment in accordance with an Act of Parliament. They are also required to take measures to preserve the culture, traditions, history, and heritage of their communities. They have control over communal land, illustrating the Constitution's recognition of the critical role traditional leaders play in the allocation of land in communal areas.

Despite the provisions that support rights to land above, the **Land Acquisition Act (Chapter 20:10)** empowers the government to compulsorily acquire land under **Section 3**, setting out the procedures for acquisition, especially of agricultural land for resettlement purposes. The **Land Acquisition Act** supports the constitutional provisions under which land can be acquired for forestry, environmental, and agricultural purposes. The State has been using this Act to acquire agricultural land to resettle rural communities, however, not all the relevant legal procedures were followed during the fast track land reform programme.

The **Rural Land Occupiers (Protection) Act** was enacted to protect land occupiers for land not yet acquired by the government. **The Rural Land Occupiers (Protection from Eviction) Act (2001)** was also passed to protect occupiers from eviction for a period of six months, if they had occupied the farm in question before March 2001.

Resettlement is also regulated through the **Resettlement Act** and the **Agricultural Land Settlement Act (Chapter 20: 01)**.

(ii) Water

Water is a critical resource supporting the lives and livelihoods of local communities in Zimbabwe. Aquatic resources (fish, vegetables, crabs, etc.) are a key protein source for riverine communities along most major rivers in Zimbabwe. These rivers form drainage systems divided into seven catchment areas and managed by catchment councils. The catchments are: Gwayi, Sanyati, Manyame, Mazowe, Save, Runde, and Umzingwane Catchments (Figure 3.1).

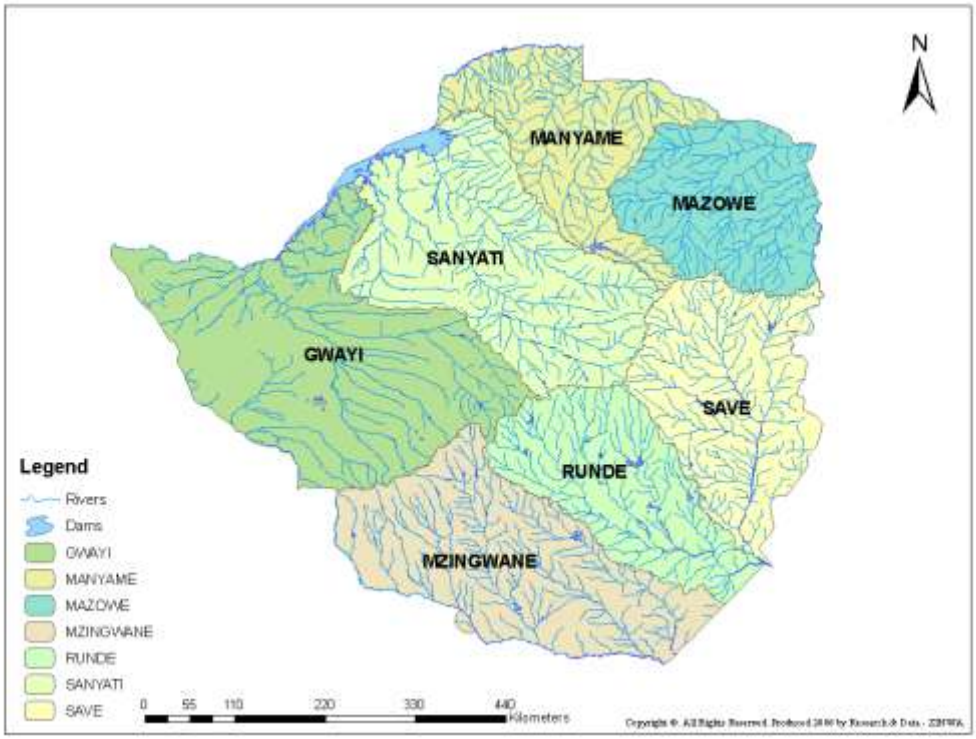

Figure 3.1: River catchments of Zimbabwe. Sourced from the Zimbabwe 4th national CBD Report 2010.

Many local communities are settled in these catchment areas because of their rich biodiversity. There are a number of laws and policies with implications on the rights of communities to access and use water resources in Zimbabwe.

The principal legislative framework for water use, management, and conservation in Zimbabwe is the **Water Act (Chapter 20:24) (1998)**.

Different uses of water are recognised in the **Water Act**, including use of water for primary purposes and agricultural purposes (e.g., irrigation of land, fish farming, animal husbandry, and the keeping of poultry) where the amount of water used exceeds 10,000 litres per day. Use of water for local authority purposes, electrical purposes, railway purposes, road purposes, and miscellaneous purposes are also set out in the legislation.

There are several provisions in the **Water Act** that have implications on the use, management, and conservation of water resources by local communities in Zimbabwe. The most important provision that seeks to protect the rights of communities is **Sections 4(1) and (2)** of the **Water Act**, which prohibits private ownership of water in Zimbabwe. These provisions protect the right to water for rural communities. Before the passage of the **Water Act** in 1998, commercial farmers enjoyed water rights to the exclusion of local communities, as water was being abstracted on a first come first serve basis.

Of all the uses of water that are recognised in the **Water Act**, the use of water for primary purposes is of paramount importance to communities. **Section 32** of the **Water Act** allows any person to abstract water for primary purposes or use, without the need for a permit where "primary purposes" is defined in **Section 2** as the reasonable use of water for basic domestic human needs in or about the area of residential premises, the support of animal life, the making of bricks for the private use of the owner, lessee, or occupier of the land concerned, or for dip tanks. Arguably, the concept of primary use of water is meant to protect the right of people to access and use water for domestic purposes, and the important function that water plays in everyday life, especially for cooking, drinking, and bathing, among other domestic uses. To that extent this section advances the rights of local communities. This is vital for those in rural areas.

However, the recognition of water use for "primary purposes" without the need for a permit does not entitle any person to enter or occupy any land for the purposes of extracting water where he/she is not entitled to be. Accordingly, one has to seek permission from the owner of the premises before water can be extracted for primary purposes. Further, under **Section 33(1)** of the **Water Act***,* Catchment Councils, whose function is to monitor the use of water, are empowered to limit the amount of water that can be extracted by people for primary purposes.

The **Water Act** specified the need for government to safeguard the interests of occupants of communal land in relation to water. **Section 48** of the **Water Act** gives the Minister responsible for communal lands the power to nominate any fit person to represent the interests of communities living on communal land before the Catchment Council on the hearing of any matter affecting the water supply or any claim for servitudes. At least in theory, this provision is important in ensuring that communal residents are involved in decision-making processes related to the use, management, and distribution of water resources and advances their rights.

Section 54 of the **Water Act** provides the right to use water when volume is insufficient to satisfy demand. Under these conditions, the Catchment Council is empowered to revise, reallocate, or reapportion the water allocations and conditions to ensure equitable distribution and use of the available water in a river system. This section seeks to ensure that all users of water have access to water during dry periods, which is important in situations where there are irrigation schemes for communal farmers who rely on irrigated water from river systems.

The **Water Act** is complemented by the **Water (Permits) Regulations 2001 (Statutory Instrument 206 of 2001),** facilitating the implementation of the water permit system provided for in the **Water Act**. For example, **Section 3** of the **Water (Permits) Regulations** prohibits the abstraction of surface water or storage of water in excess of 5,000 cubic metres in a public stream for purposes other than primary purposes, without a surface water permit issued by the Catchment Council.

The **Water (Permits) Regulations** offer an opportunity for people who do not agree with the granting of a surface water abstraction permit to make objections in Section 5. This provision can be useful in cases where the granting of a water abstraction permit may adversely affect other local communities, or when the granting of the surface water permit can lead to reduced water levels for downstream communities. In this case, the Catchment Council can protect the rights of communities to access adequate water resources.

The **Water Act** establishes the **Zimbabwe National Water Authority (ZINWA)**, the Catchment Councils, and Sub-catchment Councils for each river system in Zimbabwe, and provides for the granting of permits for the use of water. Specific legislation has also been developed to regulate procedural issues and functions of ZINWA and the Catchment Councils. The primary body governing the Water Act is the Ministry of Water Resources.

3.3 Rights over sub-soil resources

As set out in 3.1(ii), most communities in Zimbabwe live on communal lands, regulated by the **Communal Lands Act**. Communities do not own sub-soil resources such as minerals. The **Communal Land Act** only gives communities use rights in respect of land for agriculture, housing, and pasture, meaning local communities have limited surface rights over land. In addition, communities cannot sell land, mortgage the property, lease, or transfer communal land. The existing legal position makes it very difficult for communal residents to directly receive compensation and payment from mining companies in a situation where minerals are discovered at a persons' homestead, field, or grazing land.

Legislation as to ownership of subsoil resources is found in the **Mines and Minerals Act (21:05)**. **Section 2** states that the rights to minerals are vested in the President. In particular, Section 2 states that the dominium in and right to search and mine for and dispose of all minerals, mineral oils, and natural gases, notwithstanding the dominium or right which any person may possess in and to the soil on or under which such minerals, mineral oils, and natural gases are found or situated, is vested in the President. This clearly means local communities and private landholders alike do not own sub-soil resources such as minerals. In cases where minerals are discovered on land being occupied by local communities (usually communal land), they will be removed and/or displaced from the land to make way for mining operations.

The **Mines and Minerals Act** does not contain any rights for communities. **Section 188(2)** provides for the payment of compensation by holders of mining rights to private landowners where a mining site is established on such land. The rights of private landowners are protected given they have the right to claim payment as compensation for being denied the right to use and enjoy his/her property/land (Maturure 2008).

However, the position is different for communal residents who do not own the land they use for settlement, agricultural purposes, and pasture. Communities in mineral resource rich areas are primarily negatively impacted by mining operations. The communities suffer from mining-induced irregular displacements, degradation of their lands and environment, loss of livestock as a result of environmental degradation (such as deep open pits), and loss of communal land. Since local communities typically live on communal land, mining companies often fail to pay compensation to local community members in cases where they are displaced. For example, since 2010 communities in the Marange diamond mining fields have faced forced relocations, with more than 1,500 families relocated to date. The companies involved include Mbada Diamonds, Diamond Mining Corporation, Marange Resources, Anjin, Jinan, and Rera Diamonds.

Section 188(7) of the **Mines and Minerals Act** states that the Rural District Council (RDC) will act as land owner if a mine is developed on communal land and the payment of compensation is made to the District Development Fund. The local authorities are expected to use the money for development of the area under their jurisdiction. It is through the provision of such infrastructure that those on communal land are expected to benefit from contributions by mining companies. However, in reality many RDCs have not prioritised community development projects and/or have not ploughed back the monies they get from mining companies to assist communities.

3.4 State agencies mandated to develop and implement laws and policies

(i) Land Sector institutions

In Zimbabwe, the **Ministry of Lands and Rural Resettlement** has the mandate to deal with land and resettlement issues. Its mission is to acquire, equitably distribute, and manage agricultural land resources through the provision of appropriate technical and administrative services for the sustainable socio-economic development of Zimbabwe. The Ministry administers the **Land Acquisition Act [Chapter 20:10],** the **Agricultural Land Settlement Act [Chapter 20: 01]**, amongst others.

A major challenge for the Ministry is lack of access to agricultural land to supply the land reform programme for rural communities. At the same time, some recipients of the programme are not adequately utilising their land. Also, partly due to a lack of financial, technical, and human resources, the Ministry has failed to curb the many existing cases of multiple farm ownership, which further deprives communities of fertile agricultural land.

The **proposed Zimbabwe Land Commission** is another institution that is likely to play a key role in the land sector in the future. The Land Commission is provided for in **Section 296 (1)** of the **Constitution**. The Land Commission's proposed functions are to ensure transparency, fairness, and accountability in land administration; conduct periodic land audits; make recommendations to government on equitable access to and occupation of agricultural land

(especially elimination of discrimination, particularly gender discrimination); advise government on system of land tenure; and investigate and determine complaints and disputes regarding the supervision, administration, and allocation of agricultural land. The Land Commission will be vital for promoting equitable access to land for local communities and women. However, its success will depend on how political interests impact it once it is constituted. Some other national Commissions have not been independent, and the results of their work and investigations have never been made public. It is hoped that this will not be the case with the Land Commission. In addition, the Land Commission will require substantial resources, and it is unknown as to whether these resources will be made available.

(ii) Water Sector institutions

Water management has been a complex political, security, economic, and environmental issue in Zimbabwe (Kambudzi 1997), with numerous institutions involved in its past management. That multiplicity of agencies with overlapping responsibilities previously led to inefficiency in the management of water resources. As such, a new water policy was formulated under the **water reform process**, streamlining the institutions involved, and promoting the management of water resources on a sustainable basis. The water policy specifically addressed issues of water management related to challenges in the sector, including: population growth and increased economic activity (exacerbating pressure on water resources and increasing water pollution); competition for available water sources; and climate change.

The national environmental institution responsible for water management is the **Ministry of Environment, Water and Climate Change,** which operates through the **Environmental Management Agency (EMA)** and **Zimbabwe National Water Authority (ZINWA)**. ZINWA is the apex organisation for the management of water resources operating on a commercial basis in Zimbabwe, and is expected to operate and maintain water works, and also to provide services to government institutions and Catchment Councils. The major functions of ZINWA are to advise the Minister in the formulation of national policies and standards on water resources management and planning, pollution control, water quality management, and protection of the environment.

The most important function of ZINWA with implications on community rights is its mandate to exploit, conserve, and manage water resources and ensure equitable access to water, efficient allocation, distribution, and use. Further, ZINWA has a duty to take appropriate measures to minimise the impacts of droughts, floods, or other hazards. Under **Section 5(1)(e)** of the **Zimbabwe National Water Authority Act (20:25)**, ZINWA is expected to encourage and assist local authorities in the development and management of water resources in areas under their jurisdiction, especially the provision of potable water.

ZINWA also has operational responsibilities with regards to water resources. The institution has spearheaded the implementation of the Water Resources Management Strategy (WRMS). As lead institution, it is ZINWA's responsibility to educate people about the provisions and regulations concerning the **Water Act**, water resource management strategies, and other water related issues. To date, few stakeholders have received information about WRMS, implying that ZINWA needs to better coordinate with private sector organisations. ZINWA also has inadequate human and financial resources to produce

accurate and reliable data for use by stakeholders and other institutions involved in water resources management.

To date, ZINWA has not adequately enforced regulations regarding pollution control outlined in the new **Water Act**, and has generally failed to ensure adequate quality water supply in most urban areas, especially Harare and Chitungwiza, where residents have received inadequately treated water. In addition, ZINWA has been inefficient in water quality management, as evidenced by the prevalence of pollutants in water bodies such as Lake Chivero, Manyame River, Mukuvisi, and Marimba.

Section 6 of the **Water Act** outlines the functions of the **Minister of Water**, including ensuring the availability of water to all citizens for primary purposes and to meet the needs of aquatic and associated ecosystems, particularly when there are competing demands. Further, the Minister is also required to ensure the equitable and efficient allocation of the available water resources in the national interest for the development of the rural, urban, industrial, mining, and agricultural sectors (Section 6 (1) (c)). The Minister is also encouraged to ensure the participation by consumers in all water sectors, and to secure the provision of affordable water to consumers in underprivileged communities (Section 6 (2)(c)). These provisions are meant to protect the rights of poor communities to access water resources.

Relevant local authorities include rural and urban district councils as well as municipalities, which all play a vital role in the provision of water within their areas of jurisdiction (Government of Zimbabwe 2002). Each rural district has a unit of the **District Development Fund (DDF)**, which oversees the construction of small to medium sized dams (Latham 2002). Local authorities should act in conjunction with ZINWA and the responsible ministry in order to ensure that their capacity to provide water in their areas of jurisdiction is enhanced. However, this role has not been adequately fulfilled since ZINWA now has the sole responsibility of water resources management countrywide. Therefore most local authorities lack capacity to develop water resources, and this has in turn affected ZINWA's operations.

Stakeholder participation in water management has been minimal in Zimbabwe, especially regarding public participation, which has been confined to **Catchment Councils** and **Sub-catchment Councils**, established under the **Water Act** to allocate permits for water use, pollution control, and enforcement of regulations. Operating under ZINWA, these councils have clear administrative and institutional jurisdiction over matters such as planning and distribution of water; district development planning and implementation; and the installation of and maintenance of boreholes in rural areas (Maro & Thame 2002).

Further clarified in the **Water (Catchment Councils) Regulations 2000**, the functions of **Catchment Councils** are stated in Section 11(1) and include: preparation and updating outline plans for river systems; deciding and enforcing water allocations and reallocation; determining applications for the use of water and imposing necessary conditions; monitoring activities of sub-catchment councils; and maintaining all registers of permits issued for access by members of the public. Under section 12(1), Catchment Councils have the power to grant or refuse applications for a provisional permit or temporary permit for use of water; carry out inspections; revise or cancel permits; grant permits for construction of water storage works; and ensure compliance with the Water Act.

Established under the **Water (Sub-catchment Councils) Regulations** (2000), the function of **sub-catchment councils** are found in section 11(1) and include: regulating and supervising the activities of permit holders in the use of water; monitoring water flow and use in line with allocations made under the permit; ensuring that water meters are functional and in good order; promoting catchment protection; and assisting in collection of data and planning. The Regulations identify stakeholder groups such as Rural District Councils, communal farmers, resettlement farmers, and small-scale commercial farmers as being eligible for election to the sub-catchment council. The provision offers an opportunity for participation of communal farmers as members of sub-catchment councils.

The theoretical decentralisation of power that the Catchment Councils represent has failed to yield expected results in water management due to a number of constraints including lack of management skills and insufficient funding, and local authorities' prioritisation of revenue generation over conservation. Additionally, Catchment Councils and Sub-catchment Councils have played a minimal role in water quality management within their catchment areas since they are not fully committed to water pollution control. These institutions need to be strengthened and properly guided in order for them to be effective, and require adequate funding and training to dispense their responsibilities efficiently.

Although some Councils have encouraged the formation of **water user boards** to help ensure grassroots participation in the management of water (e.g., the Manyame Catchment Council), Catchment Councils and Sub-catchment Councils generally are yet to have any significant meaning or applicability to rural communities (Latham 2002). Some rural communities have no knowledge of these institutions. In some cases, rural customary communities based on chiefdoms and headmen's wards do not coincide with Sub-catchment boundaries. An example is Chief Chitsungo's chiefdom in the Zambezi Valley, which includes the Angwa River, whose watershed forms the catchment boundary (Latham 2002). This chiefdom is within the Guruve District for administrative and local government purposes, but for purposes of water management, falls partly within the Hurungwe District and the Angwa-Rukomechi Sub-catchment area. This renders institutions governing water less effective, hence making them consistently in need of change (Latham 2002). To avoid conflict between the modern and traditional institutions and ensure effective local institutional function, there is a need to integrate traditional management concerns into natural resource law.

Institutional agreements governing the **management of water in the communal areas** vary. **Traditional institutions** remain major players in natural resource management (Kigenyi et al. 2002). They are concerned with household and village governance, where small **local water point committees**, family and village assemblies provide the institutional framework for their management (Latham 2002). These bodies have existed through time and are legitimate and functional. These traditional institutions have no written rules and laws, and hence remain largely unrecognised and underrated (Kigenyi et al. 2002). They nevertheless continue to play a limited role, and are still effective in controlling communities' access to and management of resources. Traditional institutions often seek to guide the use of common pool resources controlling access and management. However, many customary institutions are fragmented and have little power to influence policies directly (Kigenyi et al. 2002).

The central government, through the smaller and streamlined **Department of Water Development,** has continued to undertake the statutory and regulatory functions in the water sector, including policy, statutory, and regulatory functions of water management (Maro & Thame 2002).

3.5 Recognition of Native or Aboriginal title

Collective, Native or Aboriginal title is not recognised. See section 3.1 for forms of title relevant for local communities in Zimbabwe.

3.6 Customary laws and procedures for local stewardship or governance

The **Constitution** recognises the application of customary law in Zimbabwe. **Section 174(a)** states that an Act of Parliament may provide for the establishment, composition, and jurisdiction of customary law courts, with jurisdiction to apply customary law. These provisions indicate that Zimbabwe has a dual legal system that recognises both customary and statutory law, acknowledging the importance of customary norms and practices in Zimbabwe. In this regard the Constitution recognises the role of traditional leaders, who are traditionally recognised as custodians of traditional practices and customary norms.

Further, **Section 280** of the **Constitution** states that traditional leaders are responsible for performing the cultural, customary, and traditional functions of a chief, head person, or village head of the community. Traditional leaders have authority, jurisdiction, and control over communal land and, under **Section 282(1)(d)**, have a role in administering communal land and protecting the environment in accordance with the law. In addition, they are also mandated to resolve disputes amongst the people in their communities in accordance with customary law.

The specific role of traditional leaders with respect to land and water management issues is also found in the **Traditional Leaders Act (Chapter 29:17)**, which provides for the appointment of village heads, headmen, and chiefs. **Section 5** stipulates functions related to land and natural resource management. On land issues, traditional leaders are required to ensure that communal land is allocated in accordance with the **Communal Land Act** and to ensure that all laws related to the use and occupation of communal or resettlement land are observed, and to prevent any unauthorised settlement or use of any land. Traditional leaders are also empowered to ensure that the land and its natural resources are used and exploited lawfully, and to control over-cultivation, over-grazing, and indiscriminate destruction of flora and fauna. They have the power to adjudicate and resolve disputes relating to land in their area, and to enforce all environmental conservation and planning laws. This means traditional leaders have an important function in promoting the rights of communities on land and water resources management.

In reality, traditional leaders often clash with local authorities or municipalities in discharging their duties, as they typically feel undermined by local authorities. While the law provides that the traditional leaders consult local authorities on various matters, it is often felt that by engaging with local authorities, they are becoming subject to them. Many traditional leaders in Zimbabwe feel that they have lost their traditional and customary authority to various government departments, and this has created tension to the detriment of community interests. Politics has also affected the traditional leadership

portfolio in the distribution of land, as some traditional leaders have become partisan and are no longer serving community interests in distribution of land, but rather are serving interests of the political party.

3.7 Provisions for local management of local communities' lands and territories

See **Traditional Leaders Act** above.

3.8 Existing freshwater/marine tenure aspects that undermine or hinder community conservation and stewardship

Traditional rural resource management has to a great extent given way to water management by technical, institutional, managerial, legal, and operational activities (Chenje & Johnson 1996).

Legislation on the management and use of water resources in Zimbabwe first came into being in 1927. The **Water Act of 1927** created a Water Registrar and Water Court which centralised water allocation through the issuing and approval of water rights. Irrigation boards were also given rights and responsibilities in payments of water developments capital for combined irrigation systems (Manzungu & Machiridza, 2005). The riparian rights doctrine was used in interpreting access rights and differentiated water use types. These principles were continued in the later **Water Act of 1947**. The Water Act (Chapter 20:22) (1976) (Liu, Undated) clarified and created regulations about ground water use for the first time and affirmed the Roman–Dutch Law concept in water management. Rights were linked to land, the priority date system of allocating water and the granting of water rights in perpetuity. However, the Water Act of 1976 was amended in 1984 and under this amendment stakeholder participation was limited to institutions such as the river boards. According to Latham (2002), the **Water Act 1976** was based on two main principles. Water rights were issued continuously and attached to a parcel of land and in terms of a priority date. This implied that the older the right the greater the priority the right over other for the appropriation of water. The Act prejudiced the development of new entrants to the use of water for commercial purposes especially for irrigation (Manzungu & Marimbe, 2002). Thus the Act deprived the rural populations, especially small scale irrigators, of the right to water use. The priority date system and the lack of real participation in the allocation of access to water were the major influences in the move towards the reform of the water sector.

In 1995, the government through the Ministry of Rural Resources and Water Development embarked on a major reform in the water sector (Government of Zimbabwe, 2002). This included the establishment of the Water Resources Management Strategy (WRMS) project to spearhead the reforms and the formulation of the new Water Act and ZINWA Act, both of 1998, and the subsequent formulation of the Zimbabwe National Water Authority (ZINWA) which was launched in January 2001 (Merka, Undated).

Modern institutional frameworks with respect to land and water have created challenges for rural communities. For example, the current **Water Act** does not make any reference to customary law, however, water use and management in rural areas is still strongly influenced by customary law and informal practices (Chikozho & Latham 2005).

Legislation enacted under the water reform programme stipulates that users must secure water permits if they want to use water for purposes other than domestic use (Chikozho & Latham 2005). This creates problems for rural water users who are not well versed with the permit application system - hence the system is not accessible to them. In continuation of past policy, Zimbabwe's waters continue to be divided into categories of commercial and primary water use. This division is a reflection of the plural legal system of important Roman Dutch law and Customary Law (Chikozho & Latham 2005). Water for irrigation restricts customary access to water. An example is the case of the Mazowe Area Case Study. Thus the current modes of water management are based on the western paradigms that ignore African institutional arrangements and worldviews (Chikozho & Latham 2005).

In addition, **ZINWA** does not reconcile with old administrative departments, causing disharmony and dilemmas. Stakeholder involvement in rural areas is low, with many at the grassroots level lacking the opportunity to contribute their opinions with regards to water management.

The **Water Act** also requires applicants for water rights to put in place water measuring devices for a water right to be confirmed as permanent. This is a disadvantage to rural water users who cannot afford to put the requisite measuring devices in place, making most water rights in rural communities temporary.

Water resources still remain in the hands of a few political personalities and government officials who have taken over farming under the Fast Track Land Reform Programme. As such, most communal rural farmers still lack access to the resource. This state of the political economy of water has thus contributed to low productivity, poverty, and environmental degradation in communal lands (Kambudzi 1997).

These challenges therefore need to be addressed in order to have a viable water economy, water democracy, and a popular water governance system in the form of Catchment Councils or any other institutional provisions. Firstly, the issues with respect to land and water have been dealt with separated, yet the two should not have been isolated during the reform process (Kambudzi 1997).

Another challenge to community stewardship under the new water legislative frameworks is that rural communities now are expected to contribute towards the operation and maintenance of water points through cost recovery (Maro & Thame 2002), a function previously provided by the Department of Water Resources. However, most rural communities cannot afford to maintain the infrastructure, and some are unwilling to pay for the service in cash or kind, thus leaving infrastructure un-serviced. The result is that some rural communities, especially those in vulnerable societies, still have lack access to adequate water supply and sanitation.

Rural communities need to be actively involved in the management of water resources if they are to perceive any economic benefits from institutional efforts. In-depth research and advocacy is required to incorporate former customary law and practise into water policy and legislation. This could lead to changes in the policy and practice more suited to the realities of sustainable management of water and other resources. Institutions governing water resources at the local level need to do so effectively with maximum autonomy.

While there is real enthusiasm to involve community institutions in water management issues, there is still a lack of clear policy or the legal framework for these institutions to operate, discouraging their participation.

3.9 Processes and pressures that infringe upon *de jure* or *de facto* territorial or tenure rights

In addition to pressures from natural resource exploration and exploitation discussed in Section 6 of this review, the phenomenon of land grabbing significantly impacts the rights of communities in Zimbabwe, particularly in the rural context.

Despite **Section 74 of the Constitution** providing that no person may be evicted from their home or have their home demolished without an order of court, forced evictions as a result of land grabbing (for the purposes of mining, large-scale agricultural activities etc.) do occur. The case of the Chisumbanje community, who have been in conflict with the government and a biofuel company (Greenfuels), is instructive. In this case, land being used by local communities for residential purposes, agricultural activities, and as pasture, was grabbed. Whilst negotiations between the company and the community have been ongoing, these have been punctuated by clashes and conflicts. Generally, local communities are not consulted and are not given any meaningful compensation. This means there is no free, prior informed consent.

The **Water Act** seeks to protect the rights of people who may be affected by displacement as a result of infrastructure development. In cases where areas have been reserved by government for dams or basin sites, the government is required to put up notices under **Section 56(1)–(7)** to prohibit people from constructing any permanent improvements in the area and carrying out any activities that may result in increased value of the land. Under these circumstances, the **Water Act** provides scope for the payment of compensation upon claims by affected people. Disagreement on compensation can be referred to the Administrative Court.

4. PROTECTED AREAS, ICCAS AND SACRED NATURAL SITES

In this section the policy and legislative framework of Zimbabwe's protected area network system will be reviewed in relation to how it impedes or enhances local community participation in protected area management. Drawing from the key legal and policy frameworks that establish and manage Zimbabwe's protected area network, it will summarise the institutional mechanisms critical in managing protected areas, and explore existing and potential opportunities for local community contributions in the expansion of the protected area network through the recognition of indigenous community conserved areas (ICCAs) under community management in relation to existing and future policy initiatives.

4.1 Indigenous Peoples' and Local Communities' Conserved Territories and Areas (ICCAs)

4.1.1 The range, diversity, and extent of ICCAs in Zimbabwe

As in many countries, ICCAs in Zimbabwe are poorly documented and as such their range, diversity, and extent is not well articulated. They are also not covered explicitly by contemporary legislation, but are recognised by traditional customs, and management often takes place within complex situations that requires liaison and negotiation among stakeholders (Dudley & Stolton 2012). The local names of these ICCAs differ between regions (e.g., *ninga/mapa, masango anoera, nzvimbo dzinoera*) and are usually included in areas regarded as sacred sites (Chibememe et al 2014). What is generally known, however, is that ICCAs exist in communal areas all over the country, but are scattered, and in the form of grazing lands and watersheds. Where a site is found, its total area is not as significantly large as proclaimed national protected areas.

4.1.2 Community governance and management of ICCAs

Where ICCAs exist, especially in the form of sacred sites, they are managed using traditional customs and beliefs such as prohibitions around fire or cutting of trees. Access and use is controlled through traditional norms and practices mainly based on beliefs, and, to some extent, myths. Violation of such traditional beliefs, customs, and practices attracts the attention of the traditional leaders, who have the authority to try and fine such offenders.

4.1.3 Main threats to local governance

There are numerous threats to communities' local governance of territories, areas, and natural resources, including poverty, changing belief systems as a result of external influences and cultural hybridisation, human encroachment, invasive alien species, illegal harvesting and over-exploitation of natural resources, as well as incompatible land use practices, poaching, and lack of community consensus. Other threats are naturally induced, such as increasing scarcity of surface water and dwindling ground water reserves.

Although some laws can be used to support the management of ICCAs, the lack of a comprehensive piece of legislation dealing with ICCAs undermines local community participation in natural resource management. There are exceptions, however, especially with respect to wildlife, where concerted efforts have been made to ensure community participation in the governance of conservation through initiatives such as CAMPFIRE.

4.1.4 Main initiatives undertaken to address the threats to ICCAs

A number of different initiatives are being undertaken at the governmental level to deal with threats to ICCAs. These include policy intervention; the promotion of traditional customs and beliefs in conservation and regional integration; and the establishment of transfrontier conservation areas, which promotes cultural exchange and the protection of community-conserved areas nationally and across borders.

For example, the establishment of the Great Limpopo Transfrontier Conservation Area (GLTFCA) re-establishes and promotes cultural exchange between the local communities in Mozambique, South Africa and Zimbabwe living in or adjacent to the GLTFCA, who share

similar conservation traditions due to their common origins. In addition, the establishment of the Kavango-Zambezi Transfrontier Conservation Area enhances the protection of culturally revered areas like the Mosi-oa-tunya (Victoria Falls). Although Victoria Falls is under the protection of the state, local communities view it as a culturally important site where important traditions and rituals are performed, including rainmaking ceremonies. Other examples include the protection of the Njelele Shrine in Matopos District, located outside the south-western fringes of the Matobo National Park in the Khumalo Communal Area. The Njelele Shrine is known for traditions such as the rainmaking rituals that are conducted annually, and efforts have been made to protect the shrine's integrity.

4.2 Protected Areas

Zimbabwe is a signatory to the United Nations **Convention on Biological Diversity** (**CBD**). In satisfaction of **Article 6 of the CBD**, requiring all contracting partners to develop national strategies, plans, or programmes for the conservation and sustainable use of biodiversity, the government, in close consultation with key stakeholders, developed the **Zimbabwe Biodiversity Strategy and Action Plan** in 1998 (Ministry of Environment and Natural Resources Management, Zimbabwe Fourth Biodiversity Report 2010).

Zimbabwe's protected areas system comprises approximately 13% of the land area under the Parks and Wildlife Estate (Figure 4.1). There are also other conservation areas outside of State protected areas including conservancies, some communal lands, botanical gardens, and private property, all together constituting over 30% of Zimbabwe's land area. This protected area network consists of the Parks and Wildlife Estate land, Forestry land, National Monuments, private conservancies, and individual wildlife farms. The Parks and Wildlife Estate consist of different land categories, including National Parks, Safari Areas, Sanctuaries, Botanical Gardens, Botanical Reserves, and Recreational Parks (Figure 4.1).

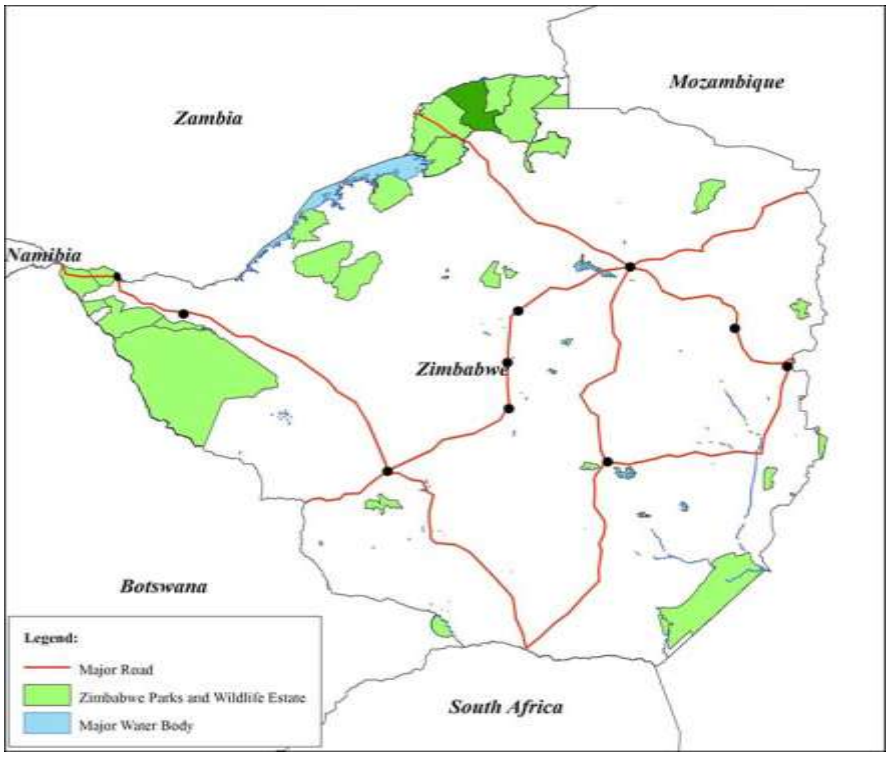

Figure 4.1: Zimbabwe National Parks and Wildlife Estates. Source: Ministry of Environment and Natural Resources Management, Zimbabwe Fourth Biodiversity Report (2010)

The parastatal **Zimbabwe Parks and Wildlife Management Authority (ZPWMA)** established under the **Parks and Wildlife Act** (Chapter 20:14) of 1996 amendment of 2001 succeeded the Zimbabwe Department of National Parks and Wildlife Management in 2004, and is responsible for managing the Parks

and Wildlife Estate, including all wildlife outside of the State protected areas, whether on private land or not.

Some indigenous and exotic forest reserves are under the jurisdiction of **Forestry Commission,** falling under the **Ministry of Environment, Water and Climate** and **Rural District Councils**, falling under the **Ministry of Local Government**, which manages them directly. Rural District Councils are also responsible for Communal Areas Management Programme For Indigenous Resources (CAMPFIRE) run in conjunction with the CAMPFIRE Association and indirectly by Parks and Wildlife Management Authority (Figure 4.2).

Local government play a particularly important role in managing the national conservation areas outside of state protected areas. National Monuments and Museums fall under the jurisdiction of the Ministry of Home Affairs and are run by the Department of National Museum and Monuments. Private conservancies and individual wildlife farms are run by private individuals either individually (farms) or collectively (conservancies).

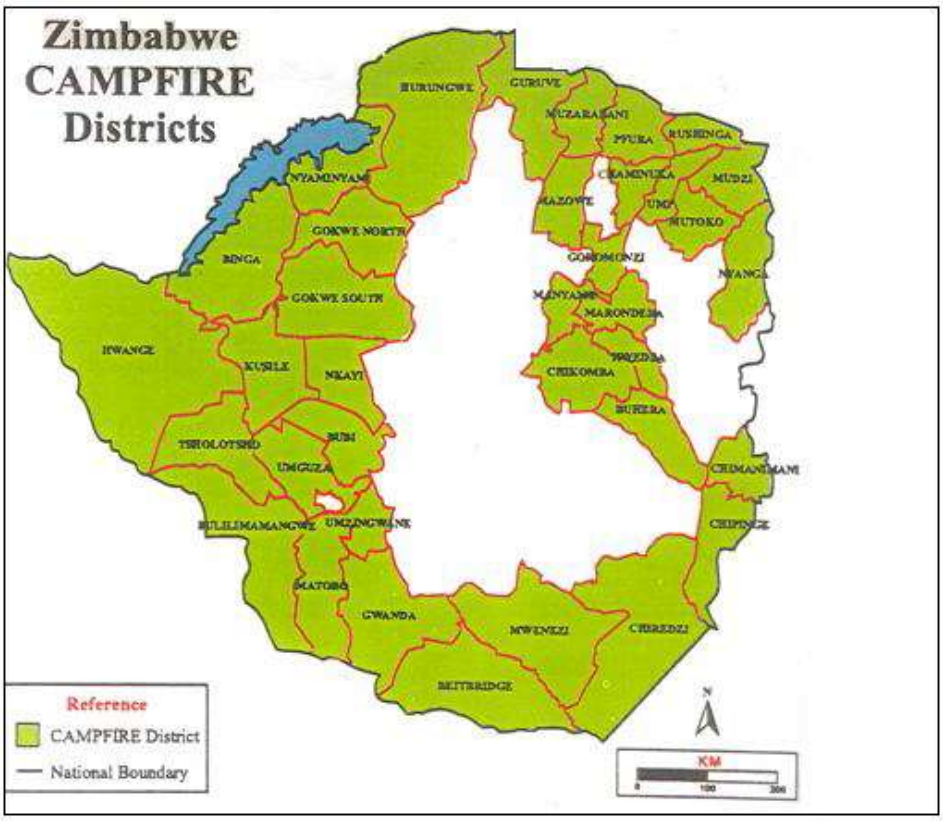

Figure 4.2: Zimbabwe's CAMPFIRE Districts. Source: CAMPFIRE Association (undated)

Forest Reserves fall under the **Zimbabwe Forestry Commission (ZFC)** and are categorised into Indigenous and Commercial Forests. Unlike other protected areas under ZPWMA and Museums and Monuments, some forest Reserves may, according to the **Communal Land Forest Produce Act** (Chapter 19:04) of 1987, be managed jointly with local communities, through their **Community Forest Associations**, or other recognised arrangements. An example of this is the Mafungautsi Forest located in Gokwe South District, where the Forestry Commission and local communities jointly manage the indigenous forest.

All of Zimbabwe's state protected areas, with the exception of smaller parks located in the interior of the country, constitute segments of much larger ecosystems where wildlife migrates seasonally across a mosaic of state and private or communal land. For example, larger mammals like elephants migrate from Chirisa Safari Area/Sengwa Research Area complex to Hwange-Matetsi sub-region, passing through a mosaic landscape that includes communal areas.

4.2.1 Laws and policies that constitute the protected area framework

A number of Zimbabwean legal and policy instruments provide the basis for establishment and management of protected areas, including provisions allowing local communities to derive benefits from protected areas. The key instruments and their provisions are summarised in Table 4.1 below.

Table 4.1: Summary of the protected area related legal and policy instruments and mandated agencies in Zimbabwe

Policy/Act	Brief Description	Responsible Ministry
Constitution of Zimbabwe Amendment (No. 20) Act, 2013	The **Constitution** outlines that the State must ensure that local communities benefit from the resources in their areas. Section 73 provides for environmental rights expounding the promotion of conservation, and securing ecologically sustainable development and use of natural resources while promoting economic and social development. In addition, under Section 282(1)(b), a function of Traditional Leadership includes *"...to take measures to preserve the culture, traditions, history, and heritage of their communities, including sacred shrines".*	Government of Zimbabwe
Parks and Wildlife Act (Chapter 20:14) 1996	This is the key legislative framework for wildlife heritage conservation and management in Zimbabwe. It provides for the establishment and management of protected areas, conservation, and management of wildlife resources and associated habitats. Section 2 confers privileges on owners or occupiers of alienated land as custodians of wildlife and offers "Appropriate Authority" status to Rural District Councils over wildlife in their respective Communal Lands on behalf of their rural local communities, referred to as "producer communities".	Ministry of Environment, Water and Climate (Parks and Wildlife Management Authority)

Policy for Wildlife Zimbabwe **1999**	The policy aims at empowering land owners to conserve and derive benefits from wildlife resources existing on their land, inclusive of communal and private lands. This enhanced the establishment of community-orientated programmes like the CAMPFIRE, designed to integrate rural development and wildlife conservation, particularly in communities living with wildlife outside of protected areas.	Ministry of Environment, Water and Climate (Parks and Wildlife Management Authority)
Wildlife Based Land Reform Policy **2006**	The policy aims to facilitate wildlife-based land reform to ensure profitable, equitable, and sustainable use of wildlife resources, particularly in areas where agricultural potential is limited. One of the policy objectives under Section 3 is to "to facilitate the indigenisation of the wildlife sector and to ensure more equitable access by the majority of Zimbabweans to land and wildlife resources and to the business opportunities that stem from these resources".	Ministry of Environment, Water and Climate (Parks and Wildlife Management Authority)
Forest Based Land Reform Policy 2004	The policy ensures that forest development plans are integrated with overall land use plans, and supports the development of environmentally sustainable small-scale industries including furniture manufacturing and wood carving. It also ensures strict control of invasive alien species encroaching from plantations into natural forests, cultural heritage sites, and protected biodiversity zones.	Ministry of Environment, Water and Climate (Forestry Commission)
National Museums and Monuments Act (Chapter 25:11) of 2001	The Minister may declare National Monuments under this Act. The discovery of any ancient monument or relic must be declared to the National Museums and Monuments Board by the discoverer or the owner or occupier where the relic occurs. The state can acquire the land on which the monument or relic occurs for its preservation or analysis.	Ministry of Home Affairs (Department of National Museums and Monuments)

Forest Act (Chapter 19:05) 1949 (as amended 2002)	The Act provides for the protection and management of both indigenous non-commercial and commercial vegetation on both alienated and unalienated land. The Act provides for demarcating forests and nature reserves, conserving timber resources, regulating trade in forest produce, and regulating the burning of vegetation.	Ministry of Environment, Water and Climate (Forestry Commission)
Communal Land Act (Chapter 20:04) 1982	The Act provides for the classification of land in Zimbabwe as communal land and for the alteration of such classification. It seeks to alter and regulate the occupation and use of Communal Land.	Ministry of Local Government and National Housing (Rural District Councils)
Communal Land Forest Produce Act (Chapter 19:04) 1987	The Act controls the use of wood resources within communal lands, where such resources in communal lands should be used for domestic purposes by the residents only.	Ministry of Environment, Water and Climate (Forestry Commission)
Traditional Leaders Act (Chapter 29:17) amendment 2001	The Act provides for the management of natural resources by traditional leaders. Section 5(1) states that traditional chiefs have the responsibility to ensure land and natural resources are used and exploited according to the law, to control: (i) over-cultivation; (ii) over-grazing; (iii) the indiscriminate destruction of flora and fauna; (iv) illegal settlements; and generally preventing the degradation, abuse or misuse of land and natural resources.	Ministry of Local Government and National Housing (Traditional Leadership Institutions)
Wildlife-Based Land Reform Policy 2006	The policy aims to promote the participation of Zimbabweans in the wildlife industry, especially local communities living in or adjacent to areas with wildlife. It encourages new participants outside core wildlife zones to engage in wildlife production where this can demonstrate profitability and sustainability, including in mixed wildlife–livestock systems.	Ministry of Environment, Water and Climate (Parks and Wildlife Management Authority)
Rural District Act (Chapter 29:13) 1988 (as	The Act, under Section (61), provides for the establishment of Environmental Committees and Sub-committees that have an oversight	Ministry of Local Government and National Housing (Rural

amended 2002)	on the conservation of natural resources in Communal Lands.	District Councils)
The Firearms Act (Chapter 10:09) of 1996	The Act provides for the control, possession, and use of firearms in the protection of problem wildlife and legal hunting. It controls the issuance of firearms for the purposes of crop protection and hunting.	Minister of Defence
Trapping of Animal (Control) Act **(Chapter 20:21) 1996**	The Act prohibits making, possessing, or using certain types of traps, and specifies the purposes for which animal trapping is permitted.	Ministry of Environment, Water and Climate (Parks and Wildlife Management Authority)
Environmental Management Act **(Chapter 20:27) 2002**	The Act provides for the development of an effective and efficient legal and administrative framework to facilitate management of natural resources.	Ministry of Environment, Water and Climate (Environmental Management Agency)

4.2.2 Definition of "protected area"

The IUCN defines a protected area as:

> *a clearly defined geographical space, recognised, dedicated, and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values* (Dudley 2008).

The **Parks and Wildlife Act** (Chapter 20:14) of 1996 does not clearly define what a "protected area" is, but provides for the:

> *…establishment of national parks, botanical reserves, botanical gardens, sanctuaries, safari areas, and recreational parks; to make provision for the preservation, conservation, propagation, or control of the wild life, fish, and plants of Zimbabwe and the protection of her natural landscape and scenery; to confer privileges on owners or occupiers of alienated land as custodians of wild life, fish, and plants; to give certain powers to intensive conservation area committees; and to provide for matters incidental to or connected with the foregoing.*

Accordingly, there are similarities between each definition.

4.2.3 State agencies mandated to develop and implement laws and policies

Each law and policy has a responsible state ministry and agency mandated with the duty of ensuring its enforcement and implementation (see Table 4.1 above). However, overall implementation of policy may also involve non-state actors, such as those from the private

sector, the local community, and non-governmental organisations. Of particular interest is the interplay between different authorities involved in transfrontier conservation.

Zimbabwe, like many Southern African Development Community (SADC) countries, is a signatory to various wildlife-related transboundary and SADC-level protocols, such as the Declaration Treaty & Protocol of the SADC of 1992, which calls for inter-sector cooperation and economic integration between member countries. As a result of this declaration, many relevant policies and protocols such as the **SADC Wildlife Policy 1997**, the **Charter of the regional Tourism organisation of Southern Africa & Reversed Protocol on Shared water courses**, the **SADC Protocol on Wildlife Conservation & Law Enforcement 1999**, and the **Treaty for the Establishment of the Great Limpopo Transfrontier Park (GLTP)** have been developed. Although regional instruments, these policies are critical as they have serious implications for indigenous and local communities, whose culture, traditions, language, socio-religious landscape, and livelihoods cross administrative and/or political boundaries.

Key transboundary policies impacting on local community rights in Zimbabwe

Zimbabwe has signed a number of transboundary legislative policies and frameworks, including:

- **Treaty on the Establishment of the Great Limpopo Transfrontier Park (GLTP)** 2002;
- **The Protocol on Wildlife Conservation and Law Enforcement** 1999 (not currently in force);
- **The Protocol on Shared Water Course Systems** (in force);
- **The Charter of the Regional Tourism Organisation of Southern Africa** (in force);
- **The Protocol on the Development of Tourism** (not yet in force).

Some of these policies oblige participating countries to ensure that all stakeholders, including local communities, participate in the management of transfrontier resources. For example, the preamble of the **Treaty on the Establishment of the GLTP** recognises, "… the important role of the private sector and local communities in the promotion and sustainable use of natural resources". In particular, article 1 defines local communities or "communities" as "…groups of people living in and adjacent to the area of the Great Limpopo Transfrontier Park, bound together by social and economic relations based on shared interest". Provisions such as this, if implemented, may assist in enhancing local community participation in the management of transboundary resources.

4.2.4 Implementation of Element 2 of the Programme of Work on Protected Areas (PoWPA)

Generally Zimbabwe has made significant strides in recent years in promoting co-management arrangements for wildlife management through the **Parks and Wildlife Act**, the **Policy for Wildlife,** and the **Wildlife-based Land Reform Policy**. These policies promote community-based natural resource management initiatives where participation by the local community in wildlife management through mechanisms such as co-management, partnerships, and joint ventures is envisaged.

The **Constitution** contains provisions to greatly enhance the participation of local communities and improve resource-use rights. Some of these mechanisms are implemented

through programmes such as the CAMPFIRE, though there are still challenges (Manyena et al. 2013).

4.2.5 The protected area framework and recognition of community rights

The designation of most protected areas in Zimbabwe follows the IUCN categories II and III (category II relating to National Parks, and Category III relating to Natural Monuments or Features), discouraging human occupation in protected areas (e.g., Matusadonha National Park falls under category II).

Like Category Ia Strict Nature Reserves, Zimbabwe's Wildlife Sanctuaries and Botanical Reserves do not recognise the rights of local communities to traditional lands in these types of protected areas, but do recognise local community rights to natural resource use, and include policy provisions for access and benefit sharing.

Safari areas and recreational parks have provisions for co-management with local communities or the Rural District Councils. For example, Malipati Safari Area located in the southeast *lowveld* of Zimbabwe is leased to Chiredzi Rural Distric Council, which manages it according to CAMPFIRE guidelines.

Photo 4.1 Ndongo Ruins in Gudo area restoration of Sacred Site by the CHIEHA and Mazivandagara Community groups

4.3 Sacred Natural Sites

4.3.1 Legislation with provisions for local community stewardship of sacred natural sites

The **Traditional Leadership Act**, the **Forest Act,** and the **Communal Land Forest Produce Act** provide for the protection of sacred groves that exist in any category of forest (state, local authority, communal land), but do not provide any provisions for communities themselves to secure and exercise rights over such areas. For example, before colonial times, the Haroni Rusitu Tropical Forest was conserved by local rural communities, but following independence that responsibility has shifted to the state (Whande et al. 2003).

However, as a result of advocacy by elected and traditional leaders for the preservation of cultural norms and practices, legislative frameworks were revised to recognise the role of traditional and local communities in the conservation of sacred community sites, through their traditional leaders. For example, Section 282 (1)(b) of the **Constitution** empowers traditional leaders to "preserve the culture, traditions, history, and heritage of their communities, including sacred shrines".

4.4 Other Protected Area-related Designations

There are a number of sites in Zimbabwe that have been designated as World Heritage Sites by UNESCO, on account of their natural splendour or historical significance. These sites include the Matopo World Heritage site and the Great Zimbabwe ruins, among others. These sites principally fall under two government agencies: the Parks and Wildlife Management Authority and National Museums and Monuments of Zimbabwe. The designation of such sites as World Heritage Sites follows extensive consultations with various key stakeholders including the government. With respect to these sites, provisions exist where some sites are still being accessed and traditional rituals conducted by local communities. An example is that of the Njelele site, located in Matopos District. Njelele is one of the oldest religious shrines in the country, and is usually visited by people from all over the country at given times of the year for the purpose of conducting ceremonies such as rain-making.

4.5 Trends and Recommendations

4.5.1 Direction of laws and policies

Zimbabwe's forest, fisheries, and wildlife sectors have over the past decades been subjected to intense evolution, moving away from strict exclusionary approaches to conservation and protected areas, towards more inclusive approaches that allow the involvement of various stakeholders. There is a gradual movement towards greater co-management between government authorities, local communities, and the private sector. Although most protected areas do not necessarily qualify as ICCAs, where co-management exists, communities generally have been empowered to participate in decision-making in natural resources governance systems.

4.5.2 Main recommendations

The current protected area legal framework does not explicitly provide for local communities to establish ICCAs. At the same time, however, there is active movement towards the promotion of community-based natural resource management. Accordingly, it is recommended that protected area legislation be reviewed to take account of protected areas on community land, and to define local communities' rights, land tenure, and community management.

In addition, more research is needed to document and establish the extent of ICCAs and their place in the current environmental legislative framework. At present there is virtually no literature on the status and extent of ICCAs, their governance, and how previous legislation has affected these areas' biological and social values in Zimbabwe.

5. NATURAL RESOURCES, ENVIRONMENTAL AND CULTURAL LAWS AND POLICIES

The section provides an understanding of how national laws and policies either support or hinder the recognition of local community rights to own, access, and benefit from their natural resources. Depending on how they are framed, such national laws and policies facilitate or hinder the recognition of local communities' ability to own, access, and benefit from their biodiversity, genetic resource, and associated traditional knowledge.

5.1 Natural Resources & Environment

5.1.1 Relevant laws and policies that support or govern local community ownership of natural resources

Zimbabwe has a number of legal and policy instruments (see Table 5.1 below) that deal with ownership, control, access, and use of natural resources, and the impacts of such laws and policies on local communities. Competing interests among stakeholders, and to some extent inadequate harmonisation of the laws, limit the provisions affecting the implementation of these laws. Legislation regarding forest management and local community involvement is discussed separately, following Table 5.1.

Table 5.1: Zimbabwe constitutional, legal, and policy provision on natural resources

Policy/Act	Brief Description
Constitution of Zimbabwe Amendment (No. 20) Act, 2013	The Constitution outlines the role of the State to ensure that local communities benefit from resources in their areas. Among other things, the State and all institutions and agencies must take practical measures to ensure that all local communities have equitable access to resources to promote their development, as well as the preservation of traditions and knowledge. Moreover, the Constitution provides for environmental rights that aim at promoting conservation, and securing ecologically sustainable development and use of natural resources while promoting economic and social development.
Parks and Wildlife Act (Chapter 20:14) 1975 (amended in 2001)	The Act provides for the establishment and management of gazetted protected areas and conservation and management of the wildlife resources and landscape therein. The Act confers privileges on owners or occupiers of alienated land as custodians of wildlife. It gives the Appropriate Authority over wildlife to Rural District Councils for communal lands on behalf of local communities.
Zimbabwe Policy on Wildlife 1992	The policy aims to, amongst other things, maintain the Parks and Wild Life Estate for the conservation of the nation's wild resources and biological diversity; ensure the adequate protection of major ecosystems or key species and habitats; encourage the conservation of wild animals and their habitats outside the Parks and Wild Life Estate; insist upon environmental impact assessments for all developments that threaten to affect wild life and protected land adversely; use the Parks and Wild Life Estate to promote a rural-based wildlife industry; harmonise the management of the Parks and Wild Life Estate with efforts of neighbouring communities that are developing wildlife as a sustainable form of land use; and transform land use in the remote communal lands of Zimbabwe through CAMPFIRE, where rural peoples have the authority to manage their wildlife and other natural resources and benefit directly.
Mines and Minerals	The Act regulates the prospecting of minerals, mining of minerals, and

Act (Chapter 21:05) 1965	development of the mining sectors. This Act does not provide rights for communities, as described in other sections of this review.
National Museums and Monuments Act 2001	Through the Act the Minister may declare National Monuments. The state can acquire the land on which the monument or relic occurs for its preservation or analysis, limiting the rights of communities.
Environmental Management Act (Chapter 20:27) 2002	The Act provides for sustainable management of natural resources and protection of the environment; the prevention of pollution and environmental degradation; the preparation of a National Environmental Plan and other plans for the management and protection of the environment; and the requirement of EIAs for specified developments.
Forest Act (Chapter 19:05) 1949	The Act provides for the management of woodlands on alienated land privately owned by the land owner. Here, the State is concerned by the over-utilisation of forests for commercial purposes by land owners including members of local communities.
Communal Land Act (Chapter 20:04) of 1982	The Act provides for the classification of land in Zimbabwe as Communal Land, and for the alteration of such classification. It seeks to alter and regulate the occupation and use of Communal Land.
Water Act (Chapter 20:24) of 1998	The Act monitors and manages all surface and underground water resources.
Communal Land Forest Produce Act (Chapter 19:04) of 1987	The Act provides for the regulation of the exploitation of and to protect forest produce within communal lands. It also regulates and encourages the establishment of plantations within communal lands.
Traditional Leaders Act (Chapter 29:17) of 2000	The Act provides for the issue of village registration certificates and settlement permits. It recognises the traditional village as the lowest unit of social organisation.
Wildlife-based Land Reform Policy 2006	The policy aims at the indigenisation of the wildlife industry and recognises the need to establish a mechanism that ensures more equitable access by communities to land and wildlife resources and to business opportunities that stem from these resources. The policy addresses issues of inequities through reforming the current land ownership to benefit a range of stakeholders. The policy highlights the important principle that wildlife management responsibility and authority must be devolved to the most appropriate level for efficient resource management, and production incentives must be maximised for the landholders.
Rural District Act (Chapter 29:13) of	The Act provides for the declaration of districts and the establishment of Rural District Councils.

1988	
Provincial Councils and Administration Act (Chapter 29:11) of 1985	The Act guides the establishment of grassroot participation structures, and provides a framework for coordination of government institutions' participation in rural development.
Regional Town and Country Planning Act (Chapter 29:12) of 1976	The Act provides for the planning of regions, districts, and local areas, with the object of conserving and improving the physical environment, in particular promoting health, safety, order, amenity, convenience, and general welfare, and efficiency and economy in the process of development. It also designates local planning authorities.

Box 5.1: INSIGHT: Forest Management

Forest management is regulated by the **Forest Act 1949 (Chapter 19:05)** and the **Communal Land Forest Produce Act 1988 (Chapter 19:04).** The **Communal Land Forest Produce Act** regulates the exploitation and management of forests on communal land, while the **Forest Act** applies to state-owned forest resources and forests on private land.

There are number of state agencies that have a direct and indirect impact on forest resources including the Ministries of Mines and Mining Development; Ministry of Environment, Water and Climate; Environmental Management Agency; Parks and Wildlife Management Authority; and the Forestry Commission.

Forest management has always been controlled by the government or its agencies. **Section 15 of the Forest Act** allows the **Forest Commission** to control and manage demarcated forests. The Act is silent on participation of communities in forest management and access to information. The **Communal Land Forest Produce Act** is silent on all aspects of participation and incentives for community participation. This has generated debate, resulting in efforts to ensure participation of community stakeholders in forest management, particularly those that dwell in areas near demarcated forests.

Despite the exclusion of community participation in the provisions mentioned above, communities have, in practice, participated in shared forest management through the **Forest Commission's Social Forestry Programme**. The Social Forestry Programme has been made possible through an innovative and creative application of the **Communal Areas Management Programme for Indigenous Resources**. The Social Forestry Programme is not provided for in current legislation, however, causing a contradiction between the legislation and practical realities.

Other **Shared Forestry Management Schemes** have existed in areas such as Mafungabusi in Gokwe District of the Midlands Province, in which local institutions such as **Resource Management Committees (RMCs)** supervise the implementation of agreed projects.

5.1.2 State agencies mandated to develop and implement these laws and policies

A number of institutions are mandated to develop and implement the legal and policy instruments relevant to natural resources and the environment and these are noted in Table 4.1 in Section 4 above. The institutions are the drivers of the laws and policies on behalf of government and the people.

5.1.3 Natural resource or environmental laws and policies that support or hinder local communities'

The **Parks and Wildlife Act** supports local communities to manage local natural resources in their areas whilst at the same time benefiting financially from their management and conservation through community-based natural resources management programmes such as CAMPFIRE.

5.1.4 Local community stewardship of territories, areas or natural resources

With respect to CAMPFIRE programmes, a CAMPFIRE committee is established through elections within the community. Proceeds and benefits from CAMPFIRE programmes pass through the Rural District Councils, which have Appropriate Authority over communal land. As a result, there is often a delay in local communities receiving their share of benefits, which are usually reduced as a result of this administrative burden.

It is recommended that decision-making powers in CAMPFIRE be devolved to local people. In addition, it is suggested that all the revenue accrued from CAMPFIRE should be channelled directly to local communities to ensure that there is a greater impact of the programme to the local communities.

5.2 Traditional Knowledge, Intangible Heritage and Culture

The **Constitution** identifies diverse cultural, religious, and traditional values as one of its founding values and principles. It makes reference to the preservation and protection of Zimbabwe's heritage. Section 16(1) of the **Constitution** obliges the State and all institutions "… to promote and preserve cultural values and practices which enhance the dignity, well-being, and equality of Zimbabweans". However, the **Constitution** does not specifically mention intangible heritage, nor is it considered in related national legal and policy instruments such as the **National Museum and Monuments Act**. Despite its absence, intangible heritage remains crucial for local communities living in and around any such monuments or sites, including those located around protected areas where such sites are found.

5.2.1 Laws and policies relating to traditional knowledge or communities' intangible heritage and culture

Legislation relevant to intellectual property in Zimbabwe is found in the **Patents Act** (Chapter 26:03). The **Patents Act** prohibits patenting of life forms. It does not deal with the geographical origins of biological material used as a basis for new products subject to patent application. There are, therefore, limited opportunities for local communities to participate in any aspect of patenting. The **Copyrights and Neighbouring Rights Act** is an additional intellectual property legal instrument, stipulating that copyright does not extend to ideas and concepts. The **Copyrights and Neighbouring Rights Act** provides for rights of authors, duration of copyright, permitted uses of copyright, etc. Like the **Patent Act**, it is not clear

how such a law may assist communities. Indeed, these laws further complicate matters for local communities by excluding the particular collective rights that local communities have over their knowledge and ideas that can be used in the development of technologies or new products.

5.2.2 Self-determination and local governance over natural resources

The role of local communities in the governance and management of national monuments that include intangible heritage sites is very limited. Section 23 of the **National Museum and Monuments Act** empowers the State to compulsorily acquire any such sites and the surrounding land, even in the area of jurisdiction of traditional leaders and their communities. The **National Museum and Monuments Act** does not acknowledge local community rights over these areas, and disempowers them in as far as the governance and control of such areas is concerned, weakening the power, authority, and status of traditional institutions. Schaaf and Rossler believe that "the power of a chief is intrinsically linked with his function as supreme custodian of sacred grove… his power over the community derives from his role as protector of the sacred grove. Should he relinquish this function, his power as chief would be forfeited" (2010). Such laws contradict long standing efforts by traditional leaders in Zimbabwe to promote the preservation and conservation of intangible heritage.

Photo 5.1 Tangurana village Muchongoyo and Chokoto Traditional Dance Group

In the same vein, both the **Patents Act** and the **Copyrights and Neighbouring Rights Act** give power to the arms of government to administer and deal with any matters related to intellectual property, excluding consideration of traditional knowledge. Inclusion of traditional knowledge in such initiatives could play a key role in enhancing communities' stakes in patents and copyright in Zimbabwe.

5.2.3 State agencies mandated to develop and implement these laws and policies

The **Department of National Museum and Monuments** under the Ministry of Home Affairs is responsible for administering the **National Museum and Monuments Act**. Decisions on monuments are derived from the National Museum and Monuments Board established by the Act. Such decisions are then implemented by departmental staff stationed in different regions of the country. Local Communities do not have a say in decisions and/or how such decisions are implemented. The **Copyrights and Neighbouring Rights Act** and the **Patents Act** are administered by the **Patent Office**.

Both the **Copyrights and Neighbouring Rights Act** and the **Patents Act** lack clarity on how community rights over their resources and knowledge are protected from misappropriation through patents and copyrighting. Free, prior, and informed consent is not a requirement in

the legislation. This means that resources that have been patented and copyrighted may derive commercial benefits which exclusively accrue to the private sector or government without local communities obtaining benefits since there is no requirement for mutual agreed terms (MAT) in either of the two Acts.

5.3 Access and Benefit Sharing

Like many Parties to the Convention on Biological Diversity, Zimbabwe is exploring ways in which Access and Benefit Sharing (ABS) issues can be dealt with locally and nationally through law and policy. This section explores the constitutional, legal, and policy provisions that impede or promote community rights to benefit from the utilisation of the genetic resources and associated traditional knowledge in Zimbabwe.

5.3.1 Laws and policies with respect to access and benefit sharing

The term Indigenous Knowledge System (IKS) is a complex, broad, and contestable term. The **Constitution** in Section 33 requests that measures are put in place to preserve and protect indigenous knowledge systems possessed by local communities. This provision recognises the importance of preservation and protection of indigenous knowledge and acknowledges its possession by local communities.

In addition, **Statutory Instrument 61 of 2009** defines "indigenous knowledge system" as:

> *…any knowledge or innovation (however expressed, mediated, articulated, or transmitted) in relation to genetic materials and their use that constitutes part of the common, traditional, or customary patrimony of a local authority or indigenous community, and includes traditional medical knowledge.*

IKS is similarly defined by the **Protocol on the Protection of Traditional Knowledge and Expressions of Folklore** within the framework of the Africa Regional Intellectual Property Organisation (ARIPO) as:

> *…any knowledge originating from a local or traditional community that is the result of intellectual activity and learning, insight in a traditional context, including know-how, skills, innovations, practices, and learning where the knowledge is embodied in the traditional lifestyle of a community, or contained in the codified knowledge systems passed on from generation to generation* (Ruppel 2013).

The **Statutory Instrument 61 of 2009** further describes traditional medical knowledge as knowledge or innovation in relation to genetic materials and their use for therapeutic purpose. It goes on to describe traditional medical knowledge as knowledge: "that constitutes party of the common, traditional, or customary patrimony of local authority or indigenous community; or that is held by a traditional medical practitioner, whether or not by virtue of being a member of a local authority or community referred to in paragraph (a)".

Differences in terminology have the potential to foster conflict and implementation complications. For example, the **Constitution** refers to traditional knowledge as indigenous knowledge systems, while the **Statutory Instrument 61 of 2009** refers to indigenous genetic resource-based knowledge. This lack of a universally agreed definition of traditional

knowledge in national law presents potential future conflicts. **Statutory Instrument 61 of 2009** therefore needs to be aligned to the **Constitution**.

Despite differences around definition, following are a number of laws and policies with respect to access and benefit sharing, traditional knowledge, and genetic resources in Zimbabwe.

(i) Constitution of Zimbabwe

Zimbabwe is one of the few countries in Africa to have in place legal and policy mechanisms that support local community rights to preserve and protect indigenous knowledge systems. **Chapter 2** of the **Constitution** provides the foundation and legal basis for local community engagement in the conservation and sustainable use of biodiversity and the sustainable development process by recognising the rights of local communities to access and benefit from natural resources in their areas. Specifically, Section 33 of the Constitution mandates the State to "…take measures to preserve, protect indigenous knowledge systems, including knowledge of the medicinal and other properties of animal and plant life possessed by local communities and people". Whilst this provision does not extend to state that the use of such knowledge should benefit the holders of such knowledge, **Section 13(4)** provides that "the State must ensure that local communities benefit from the resources in their areas".

The **Constitution** is therefore consistent with the third objective of the CBD and the objectives of its Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. More than mere stakeholders, in the Nagoya Protocol communities are also rights-holders empowered as true custodians of their natural resources, and resulting in the conservation of national and cultural heritage.

Section 16(3) of the **Constitution** requires the State and all institutions to "take measures to ensure due respect for the dignity of traditional institutions". In addition, the **Constitution** obliges all institutions and government agencies to involve communities and their leaders in the formulation and implementation of development plans and programmes that affect them (Section 13(2)). Such rights for local communities also come with duties and obligations, in ensuring that these resources are conserved and sustainably utilised, consistent with Section 73 of the Constitution.

(ii) National ABS-related policies impacting on local communities

There are a number of legal and policy instruments that elaborate on relevant provisions within the **Constitution** such as the **Environmental Management Act**, the **National Environment Policy and Strategies** 2009, **Statutory Instrument 61 of 2009 (Access to Genetic Resources and Indigenous Genetic Resource-based Knowledge) Regulation** and the **Plant Breeders Act of 2001** (now Chapter 18:16). These are detailed below.

<u>Environmental Management Act (Chapter 20:27)</u>

Section 116 of the **Environmental Management Act** (Chapter 20:27) requires the responsible Minister to take measures necessary for the conservation of biological diversity and the implementation of Zimbabwe's obligations under the CBD. Key among the measures is to "protect the indigenous property rights of local communities in respect of biological diversity". This provision empowers local communities to demand from the State and other

stakeholders, protection and respect for their rights over biodiversity, including access and benefit sharing.

Section 117 of the **Environmental Management Act** further mandates the Minister to enact regulations that "provide for the equitable sharing of benefits arising from the technological exploitation of germplasm originating from Zimbabwe between the owner of the technology and the Government". On the face of it, the drawback of this provision is that ABS appears to exclude the involvement of communities, with benefits shared between the owner of relevant technology and government. However, **Statutory Instrument 61 of 2009 (Access to Genetic Resources and Indigenous Genetic Resource-based Knowledge) Regulation** clearly defines indigenous community rights in a comprehensive manner and should be read in conjunction with all other relevant legislation.

Statutory Instrument 61 of 2009 (Access to Genetic Resources and Indigenous Genetic Resource-based Knowledge) Regulation

This instrument is the core legal instrument that regulates the utilisation of genetic resources and indigenous genetic resources-based knowledge in Zimbabwe. It is the pillar for the access and benefit-sharing regime in Zimbabwe. In particular, it mirrors and operationalizes access and benefit-sharing provisions for local communities contained in the Constitution including Sections 13(4), 16(3), 18(2), and 33.

Objectives of the Regulation include protection of the rights of local authorities and communities to their genetic materials and indigenous genetic resource-based knowledge through promotion of indigenous genetic resource-based knowledge by conserving and strengthening the indigenous communal systems of informal knowledge, collective innovations, and transmission thereof which do not conform to the notion of private ownership, private intellectual property rights, or individual privilege.

The Regulation provides an appropriate system of access to genetic resources and indigenous genetic resource-based knowledge that is based upon the explicit prior informed consent of the local or indigenous communities and the State. The Regulation also implement appropriate mechanisms for the equitable sharing of the benefits arising from the use of genetic resources and indigenous genetic resource-based knowledge; that is, mechanisms that ensure the participation and agreement of concerned communities in decision-making regarding the distribution of benefits that may be derived from the use of genetic resources and indigenous resource-based knowledge.

Statutory Instrument 61 of 2009 (Access to Genetic Resources and Indigenous Genetic Resource-based Knowledge) Regulation was enacted to help regulate access to traditional knowledge and genetic resources in the country and within local communities. The Regulation was developed before the adoption of the Nagoya Protocol to the CBD. Part 3 of the Regulations accord intra, extra, and specific communal rights in relation to genetic resources and indigenous genetic resource-based knowledge to local communities and authorities. Such rights for local communities include: the right to be consulted with respect to access to any genetic resources and traditional resource-based knowledge; for prior informed consent to such access; and to manage, maintain, conserve, and reproduce genetic materials that are indigenous to the local community concerned.

In addition, Part 7 of the Regulation provides for communal rights claims, where the local community has the right to lodge a claim to redeem its rights to any genetic resources and the genetic resource-based knowledge. It asserts the rights of indigenous and local communities, medicinal practitioners, and communal rights claims over their genetic resources and indigenous genetic resources-based knowledge; and recognises community rights claims as "a claim by an indigenous community for the recovery or recognition of ancestral rights to genetic resource-based knowledge". The Instrument also bestows the community with a variety of other rights. Section 111, paragraph 8 provides that the community has exclusive specific rights, including:

- Managing, maintaining, conserving, and reproducing genetic material that is indigenous to the community concerned;
- Harvesting, gathering, collecting specimens of or taking samples from or otherwise prospecting for, genetic materials that are indigenous to the indigenous community concerned;
- Harvesting, gathering, or collecting on a large or commercial scale genetic material that is indigenous to the community concerned;
- Cultivating or breeding on a large or commercial scale genetic materials that are indigenous to the community concerned;
- Exporting from Zimbabwe any protected genetic materials indigenous to the community concerned;
- Marketing, beneficiating, or otherwise exploiting for gain genetic materials that are indigenous to the community concerned;
- Publishing any indigenous genetic resource-based knowledge that constitutes part of the common, traditional, or customary patrimony of an indigenous community;
- Publishing or registering a patent or other intellectual property right in relation to any genetic material indigenous to the community concerned, including any indigenous resource-based knowledge.

In addition paragraph 6(1) of Section 111 gives "The rights of the residents of a local authority or members of an indigenous community … to exchange among themselves genetic resources, the products derived therefrom *and associated indigenous genetic resource-based knowledge, for their own purposes in accordance with their customary practices."* Paragraph 11 of Section 111 states that: "The rights expressed… are inalienable and shall be deemed to have always been held by… members of an indigenous community concerned, not-withstanding the past absence of any written law recognising such right."

Box 5.2: Case Study 1, Cosmetics & food supplements from Moringa in Binga

Professor **Muzondo** from the Africa University (AU) worked with the Binga community on a research project involving the local tree *moringa* (*Moringa olefera),* which was used by the local community for various purposes, including as vegetables for the local people and fodder for livestock. This work resulted in the development of natural products such as cosmetics and food supplements that are now commercialised. A benefit-sharing arrangement has been put in place that allows the Binga community to obtain royalties from the use of their genetic resources (GR) and associated traditional knowledge. The companies have provided solar energy and a windmill to the community, and have helped in the conservation of biodiversity and sustainable use of the GR. Schools and a hospital have also been developed in Binga. The community is now involved in the commercial farming of new *moringa* plant varieties in the area, which has contributed to employment creation and reduced outmigration of able-bodied members of the community. In addition, Professor Muzondo (AU) and Professor Chikuni (University of Zimbabwe) are developing inventions which are licensed by the companies, bringing income to the university through royalties, markets for farmers, and community benefits from **related products**. The government benefits from this project through tax and exported goods. Patents for the products are licensed to China, and have enabled Africa University to penetrate the Chinese Market.

Source: Mpanju (2013)

National Environment Policy and Strategies of 2009

The **National Environment Policy and Strategies of 2009** (NEP) seeks to harmonise all environment-related sectoral policies. The document is critical in providing guidance to relevant legal instruments. The **NEP** has, as an objective, the promotion of equitable access to and sustainable use of natural and cultural resources, with an emphasis on satisfying basic needs, improving standards of living, enhancing food security, and reducing poverty.

The policy has set out key provisions that promote local communities' participation in biodiversity conservation and sustainable use and local communities. These include:

- Guiding Principle 14, paragraph 3, which calls upon stakeholders to "incorporate the principle of prior informed consent of those local communities providing access to these genetic resources and to knowledge of their traditional uses;
- Guiding Principle 11, which calls for the establishment and strengthening of legislative and administrative provisions under which local communities can share equitably in the results of research and development and the benefits arising from the commercial and other uses of plant resources;
- Guiding Principle 28 states that communities and individuals have the sovereign right to retain or share their indigenous technical knowledge practices concerning the properties and uses of natural resources, and should therefore benefit equitably from any use of that knowledge. It also promotes the equitable sharing of benefits arising from the use of indigenous technical knowledge and practices and calls for the establishment of the means to monitor and enforce equitable sharing of benefits.

- Guiding Principle 22 calls for the strengthening of the rights of the poor and vulnerable groups to access and use natural resources on a sustainable basis, including for the purposes of income generation.

Access and benefit-sharing policies and laws in the agricultural sector

In Zimbabwe, the agricultural sector has a plethora of crop-related policies with respect to access and benefit sharing. Particularly important is the **Plant Breeders Act** of 2001 (now Chapter 18:16), which is now a *sui-generis* law updated to embrace access and benefit-sharing principles and provisions from both the CBD and the International Union for the Protection of New Plant Varieties (UPOV Act of 1991) (Chitske 2000). The **Plant Breeders Act** recognises and protects local communities (including smallholder farmers) for their efforts in developing new varieties. In turn, this allows them to share the benefits arising from the commercialisation of agro-diversity, such as seed varieties. However, the sector lacks a specific access and benefit-sharing policy on livestock.

Photo 5.2 Traditional seed displays by local community members at a national CBD meeting. Source: Gladman Chibememe

5.3.2 Free, prior and informed consent, consultations and customary decision-making

There are several provisions within Zimbabwean law and policy that allow for free, prior, and informed consent and effective consultations with local communities. They include:

- Guiding Principle 11 of the **National Environment Policy and Strategies 2009** which seeks to continue to develop and implement modalities for controlling and regulating access to plant resources, ensuring that these incorporate the principle of

prior informed consent (PIC) of the local communities that provided such resources or knowledge of their uses;

- Part 111 of the **Statutory Instrument 61 of 2009 (Access to Indigenous Genetic Resources and Genetic Resource-based Knowledge) Regulations, 2009** which requires that communities:
    - are consulted with respect to such access where it is to be given to persons who are not residents of the local authority or members of the indigenous community concerned (section 7a);
    - give explicit prior informed consent to such access, where such access is (i) to be given to persons who are not residents of the local authority or members of the indigenous community concerned (7b);
    - are compensated for (ii) any benefits that may accrue from such access (7c);
    - can withdraw consent to such access if it is or is likely to be detrimental to its natural or cultural heritage, or to place restrictions to such access in those circumstances (7d).

Box 5.3: Case Study 2, The Begonia madagascariensis ABS Agreement

A professor at University of Lausanne in Switzerland was granted a patent in 1991 for the fungicidal ingredients of *Begonia madagascariensis*. The invention was based on Zimbabwean traditional knowledge of the root of the plant, but excluded local stakeholders (such as University of Zimbabwe, the Zimbabwe National Herbarium and local communities).

The University of Lausanne and an American pharmaceutical company then signed an agreement with the following conditions:

- A royalty payment of 1.5% of the company's net sales of the product;
- University of Lausanne to share 50% of the royalty from any product derived from the knowledge with the Zimbabwe National Herbarium and the Department of Pharmacy at the University of Zimbabwe.

The key challenges were as follows:

- No clear and full prior informed consent for either the Government of Zimbabwe or the local communities who supplied the traditional knowledge;
- No contract was signed between University of Lausanne and local stakeholders;
- No mutually agreed terms for a fair and equitable benefit-sharing mechanism.

Source: Adopted from SADC, Gaborone (2007)

5.3.3 Fair and equitable sharing of benefits arising from access to genetic resources and related traditional knowledge

As set out in the description of constitutional, legislative, and policy provisions above, there are key provisions that support the fair and equitable sharing of benefits arising from access to genetic resources and related traditional knowledge. Case Study 1 (see Box 5.1 above) is clear testimony that initiatives that support fair and equitable benefit sharing involving local communities and various stakeholders can and have been implemented. However, additional practical models and pilot projects supporting fair and equitable sharing of

benefits arising from access to genetic resources and related traditional knowledge need to be implemented country-wide.

5.3.4 State-implemented laws, policies and frameworks governing processes

It is unclear whether the few initiatives and projects involving fair and equitable sharing of benefits arising from access to genetic resources and related traditional knowledge such as the Moringa Project in Binga are being championed by the State in an effort to implement its laws and policies consistently. Such initiatives have largely been the result of voluntary efforts by non-state actors and stakeholders such as the Africa University. There is a need for the State to take deliberate steps towards ensuring that relevant or related laws and policies are aligned with the constitutional provisions on access and benefit sharing.

It is important to note that Zimbabwean laws and policies on access and benefit sharing pre-date both the Zimbabwean Constitution and the Nagoya Protocol on Access and Benefit Sharing, both of which contain clauses and provisions that are more progressive than those found in laws such as **Statutory Instrument 61 of 2009 (Access to Indigenous Genetic Resources and Genetic Resource-based Knowledge) Regulations** and the **National Environment Policy and Strategies 2009.** Thus there is a need to revise and update relevant laws and policies.

5.3.5 State agencies mandated to develop, implement and monitor these laws and policies

Although the Nagoya Protocol on Access and Benefit Sharing mandates that States designate an indigenous competent authority to interface with the national competent authority, neither of these structures has been clearly established in Zimbabwe. Currently several institutions are involved in the implementation of policy and programmes in a sectoral and fragmented way (see Table 5.2 below). Notably, neither local communities nor their organisations are represented here.

Table 5.2: Sector, Policy or law and organisation in the ABS sector

Sector	Policy (s) or law(s)	Organisation(s)
Environment	Environmental Management Act (Chapter 20:27)	Ministry of Environment, Water and Climate Change; Environmental Management Agency
Forestry and wildlife	Statuary Instrument 61 of 2009 (Access to Genetic Resources and Indigenous Genetic Resource-based Knowledge) Regulation; National Environment Policy and Strategies of 2009	Ministry of Environment, Water and Climate Change; Ministry of Local Government and Housing; Forestry Commission; Parks and Wildlife Authority
Agriculture	Plant Breeders Act of 2001	Department Specialist Services under the Ministry of Agriculture.

(i) Non-state Actors and Access and Benefit Sharing

When dealing with traditional knowledge, access, and benefit sharing, it is essential to understand the role of non-state actors such as non-government organisations (NGOs) working within the framework of the Community Based Natural Resource Management Programme (CBNRM).

In Zimbabwe the work in forest and biodiversity product development by the Southern Alliance for Indigenous Resources (SAFIRE), the Global Environment Facility Small Grants Programme (GEF SGP), and CAMPFIRE is worth mentioning. The interaction of local communities, private actors, and NGOs (especially SAFIRE) presents an interesting but enlightening scenario that requires research and greater understanding.

Over the years, local communities have used their traditional knowledge to develop indigenous plant components into various food and medicinal products. Such products include sausage tree juice (*kigelia africana juice)*, marula oil, makoni tea, and masawu jam. These products were initially supported through research and value-addition by SAFIRE, and later by San Proto and Phytotrade Africa. In addition, the African potato (*Hypoxis* species), known in vernacular as *nhindi,* has been used by indigenous communities in Zimbabwe to treat various ailments, and is now popular for its ability to relieve complications associated with HIV/AIDS (Koro 2002). Such initiatives began in the late 1990s and early 2000s, and involved local communities in the south-eastern, eastern, and northern districts of Zimbabwe, such as the Chibememe, Makoni, and Rusinga communities respectively. For example, the Chibememe community and the Chibememe Earth Healing Association (CHIEHA) devised methods of sustainably and prudently utilising their local biological and genetic resources, in particular the *Kigelia africana* (mubveve) juice, for use as a remedy for skin, wounds, and dental problems (Muparange 2002).

Photo 5.3: Kigelia africana (mubveve) juice production by the Chibememe community. Source: Gladman Chibememe (2003)

6. NATURAL RESOURCE EXPLOITATION AND EXTRACTION

This section explores the various legal and policy mechanisms critical in accessing and managing mineral resources in Zimbabwe, and particularly looks at the extent to which these instruments enhance or impede indigenous and local community's rights over these resources. It includes national and grassroots experiences and case studies on the interface between local communities, the national policy, and legal systems in Zimbabwe. It also focuses on issues of policy reform, key judgements, local community engagement, and resistance in this important sector.

The Africa Mining Vision[3] regards communities, the state, civil society organisations, and the private sector as key stakeholders who should all participate in the policy and decision-making processes in the mining sector. While stakeholders such as government and the private sector are represented and participate in the formulation of mining laws and policies through the Mining Affairs Board, stakeholders like civil society organisations and communities are marginalised in this regard in Zimbabwe. The exclusion of these two key stakeholders does not augur well for the recognition of community rights in natural resources management of minerals.

6.1 Natural resources being explored or extracted

Zimbabwe has a significant and diversified mineral resource base. The Zimbabwean Geological survey of 1990 lists no fewer than 66 base and industrial mineral deposits found in the country. The major mineral deposits include coal, gold, chrome, nickel, asbestos, copper, emerald, black granite, and the platinum group metals. The recently discovered diamonds in the Marange Diamond Fields are estimated to constitute about 25% of the world's deposits, and expected to yield up to US$2 billion a year in revenue. Zimbabwe also has the world's second largest reserves of platimum after South Africa.

6.2 Laws and policies with respect to natural resource exploration and extraction.

Zimbabwe has a number of laws and policies that regulate the exploration and exploitation of mineral resources. These include the **Constitution**, the **Mines and Minerals Act 1961, Rural District Councils Act** (Chapter 29:13), **Communal Land Act** (Chapter 20:04), the **Environmental Management Act**, the **Gold Trade Act** (Chapter 21:03), **Precious Stones Trade Act** (Chapter 21:06), **Diamond Policy, Zimbabwe Mining Development Corporation Act**, and **National Environmental Policy and Strategies,** among others.

The **Mines and Minerals Act** is the principal legal framework regulating the exploration and exploitation of mineral resources in Zimbabwe. The Act provides for the acquisition, maintenance, and relinquishing of mining titles (Chamber of Mines), and identifies six main exploration and mining titles. For exploration, these are Exclusive Prospecting Orders (EPOs) and Special Grants. For mining, these are claims, Special Grants (for coal and energy minerals), mining leases, and special mining leases. The **Mines and Minerals Act** is supported by a plethora of other laws and policies.

[3] The Africa Mining Vision was adopted by the African Heads of State and Government in February 2009. It is a blueprint on how African states that are rich in mineral resources can maximize them for industrialization.

The **Mines and Minerals Act** is a very old piece of legislation, passed during the colonial era, and widely regarded as no longer in keeping with Zimbabwe's developmental aspirations. Although it has been amended several times, there have not been any comprehensive review and reforms of the Act. The **Mines and Minerals Act** in its current state is oriented towards mineral extraction, not sustainable management. Zimbabwe's outgoing Deputy Prime Minister has described the current **Mines and Minerals Act** as criminal (Mutambara 2012). There is general consensus that if Zimbabwe is to derive competitive as opposed to comparative advantage from its significant and diversified mineral resource base, it has to reform its archaic legal and policy framework. The Government of Zimbabwe has set in motion a process of reforming the current **Mines and Minerals Act**, in the form of a Draft Minerals Policy. Once the Draft Policy has been finalised and adopted by Cabinet, it is hoped that it will result in the development of a new and comprehensive **Mines and Minerals Act** (2012).

After Zimbabwe's harmonsied elections, it is hoped that the mining sector will play a catalytic role in spurring economic growth. The mining sector has grown at an annual rate of more than 30% since 2009 (Budget Statement 2013). The average contribution of the mining sector to the Gross Domestic Product (GDP) has grown from an average of 10.2% in the 1990s to an average of 16.9% from 2009-2011 (*ibid*). Mineral exports rose by about 230% over the 2009-2011 period, making it the leading export sector (Budget Statement 2013).

6.3 Environment and human rights considerations

The **Mines and Minerals Act** does not take into account the environment and human rights. Given Zimbabwe's current legislative and policy framework, it is not surprising that mining activities violate communities' civil, political, economic, social, cultural, and environmental rights. The violation of community rights is manifested by eviction and relocation of communities without fair and adequate compensation, environmental degradation, lack of meaningful benefits to communities, pollution of water sources, and other inhuman and degrading activities that characterise the community experience in mining areas like Mutoko and the Chiadzwa Diamond Fields. Research has been carried out as to how the exploration and extraction of mineral resources has negatively affected the livelihoods of local communities in the areas it is currently operating in.[4]

6.4 Natural resource extraction laws and the rights of local communities

Before the enactment of Zimbabwe's new **Constitution**, it could be argued that the laws and policies related to mining took precedence over or limited the rights of local communities. Despite the new **Constitution** and other legislation like the **Mines and Minerals Act** and the **Environmental Management Act** calling for respect of the rights of local communities, when mineral resources were discovered, those community rights – be it environmental, economic, social, or cultural – become secondary. With regards to prospecting, section 31(1)(a) of the **Mines and Minerals Act** states that no prospecting on any portion of communal land Should occur without the consent of the occupier of the land concerned.

[4] Zimbabwe Environmental Law Association, 2011. Extractive industries Policy and legal Handbook. Analysis of key issues in Zimbabwe's Mining Sector. Case study of the Plight of Marange and Mutoko Mining Communities and Mining within Zimbabwe's Great Dyke, 2012. See also Dhliwayo, M and Mtisi, S, 2010. A Citizen's Guide to Understanding Ecological Debt. See also Transparency needed about Marange diamonds, Interview with Melania Chiponda. Kubatana, 18 January, 2012.

This clearly recognises community use, management, and and access rights over communal land.

The **Environmental Management Act** is very clear on a community's environmental rights and the need for communities to be consulted and participate in the decision-making process (see **Section 4 of the Environmental Management Act** on Environmental Rights and Principles of Environmental Management). Furthermore, the **Environmental Management Act** states at Section 3(2) that if any other law conflicts or is inconsistent with the Act, the Act shall prevail.

In theory, these rights of communities have to be taken into account in the exploration and exploitation of mineral resources, including consultation, access to information, fair and adequate compensation, and proper resettlement. In practice, however, it is another story. The major weakness of community rights in relation to mining is the lack of secure tenure over land and mineral resources in areas occupied by communities. The **Communal Land Act** regulates the use and occupation of communal land in Zimbabwe. Communal land (where communities live and where most mining activities take place) belongs to the state and is vested in the President, as previously stated. In this regard the enactment of the **Constitution** is a possible game changer. The **Constitution** recognises environmental, economic, social, and cultural rights as fundamental rights, as discussed in detail above in Section 2. However, the justiciability of these rights in practice is yet to be tested.

6.5 Free, prior and informed consent, consultations and customary decision-making

The current legal and policy framework does make provision for free, prior, and informed consent and effective consultations with local communities. These provisions are found in the **Constitution**, the **Environmental Management Act,** and the **National Environmental Policy and Strategies**. These provisions are extensively discussed in Section 2 on Human Rights. However, there is a huge disjuncture between policy and legal provisions and how they are implemented. In practice provisions that recognise the rights of local communities are disregarded, or paid minimal attention.

6.6 Fair and equitable sharing of costs and benefits arising from resource extraction

The **Constitution** and the **Environmental Management Act** make provision for the fair and equitable sharing of benefits arising from access to genetic resources and related traditional knowledge. Section 8 of the **Environmental Management (Access to Genetic Resource-Based Knowledge) Regulations** allows communities to harvest, gather, collect, market, beneficiate, or exploit for gain, genetic resources on a large commercial scale. The **Environmental Management Act** provides for the sustainable management of natural resources while promoting justifiable economic and social development. It also calls for development that is socially, environmentally, and economically sustainable. This can be interpreted to imply the fair and equitable sharing of benefits, as development can never be socially, environmentally, and economically sustainable without the involvement of communities. Section 18(2) of the **Constitution** requires the State and its associated agencies take practical measures to ensure that all local communities have equitable access to resources to promote their development.

The **Indigenisation and Economic Empowerment Act** (2008) through the establishment of Community Share Ownership Schemes or Trusts is another way of promoting the fair and equitable sharing of benefits. The **Indigenisation and Economic Empowerment (General) (Amendment) Regulations 2010** (Statutory Instrument 116 of 2010) makes provisions for community interests through a trust. Where mining sector trusts are already operational, communities hold 10% equity shares in those mining companies operating in their areas. Community Share Ownership Schemes or Trusts that are already operational include the Mhondoro-Ngezi Community, Gwanda, the Zvishavane-Shurigwi, Tongogara, and Zimunya-Marange Community Share Ownership Schemes, among others.

6.7 Natural resource extraction laws and environment, social and/or cultural impact assessments

The **Mines and Minerals Act** does not contain provisions mandating for environment, social, and/or cultural impact assessments. However, the **Environmental Management Act** requires Environmental Impact Assessments (EIAs) to be carried out before certain projects are implemented under Sections 97, 98 and 99. These projects are listed in the 1st Schedule of the **Environmental Management Act,** and the exploration and extraction of mineral resources is one of the listed activities. An EIA includes assessment of environment, social, and cultural impacts. The **National Environmental Policy and Strategies 2009** also makes provision for EIAs.

6.8 Community engagement in impact assessments

Community engagement through impact assessments is implied rather than expressly stated or provided for in the **Environmental Management Act**. In consideration of whether to approve an environmental impact assessment and issue the relevant certificate, the Director General is required to consult any authority, organisation, community, agency, or person, which or who, in his opinion, has an interest in the project, according to Section 100(3)(c) of the **Environmental Management Act**. Since communities are among the stakeholders whose opinions will be sought to decide whether or not to issue a certificate of approval to a project to which an environmental report relates, it could be argued that, to some extent, consultation and free, prior, and informed consent is provided for, for communities.

6.9 State-implemented laws, policies and frameworks governing processes

Community Share Ownership Schemes are designed to ensure accelerated rural development. They can be interpreted as part of efforts to promote fair and equitable sharing of benefits from the exploitation of natural resources. Trusts can use proceeds gained for the operation and maintenance of schools, hospitals, and healthcare services, as well as other developmental projects like the building of dams, roads, and bridges.

6.10 State agencies mandated to develop, implement, and monitor these laws and policies

Under **Section 6,** the **Mines and Minerals Act** establishes a **Mining Affairs Board (MAB)**. A very important policy and decision-making institution in regards to mining, the MAB receives applications, deliberates on them, and makes recommendations to the Minister for onward transmission to the President for approval of various mining and exploration titles

such as Exclusive Prospecting Orders (EPOs) and Special Grants for Energy and Minerals. The MAB also deliberates and makes decisions on Mining Leases and Non-Standard Tribute Agreements. The MAB may, in addition, perform such other functions and duties as may be required of it by the Minister in terms of **Section 7** of the **Mines and Minerals Act**. The MAB is made up of representatives from government, the Chamber of Mines, the Commercial Farmers' Union, and the Institute of Chartered Accountants.

7. NON-LEGAL RECOGNITION AND SUPPORT

7.1 Non-legal government support

The Government of Zimbabwe has recognised and supported non-legal initiatives, concerning the governance and management of conserved territories, areas, and natural resources by local communities. Such initiatives include CAMPFIRE, multiple-use Forest Initiatives, and various community-based natural resource management programmes, in the areas of wildlife, forest, and fisheries. More the thirty-six Rural District Councils (RDC) support CAMPFIRE programmes (see Figure 4.2).

In addition, various communities throughout Zimbabwe manage their own forest and wildlife areas, recognised by government agencies such Agricultural Rural Extension (AREX), the Forest Commission, and the Environmental Management Agency, among others. Examples of community managed areas include: the Nyangambe Wildlife Area, Zivembava Island, Chibememe Mainland Forest, the Mahenye Wildlife Area, and many other community-based projects implemented under the auspices of programmes such as the Global Environment Facility Small Grants Programmes.

7.2 Non-legal non-governmental organisation support

Civil society organisations, and in particular environmental NGOs, play a key role in supporting the management and proper governance of indigenous peoples' community conserved areas and natural resources. This support takes a number of different forms including: facilitating projects; providing project funds, training and capacity building of local communities, and policy and legal advice; raising awareness on key issues (e.g., ABS, climate change, etc.); and researching and documenting natural resources, traditional knowledge, and other matters.

7.3 Key issues related to the non-legal recognition and support given by the government or non-governmental actors

The environment is not prioritised in national budgets in many countries and Zimbabwe is no exception. Despite the opportunities provided by and potential role that natural resources could play in improving Zimbabwe's GDP, a need to raise the profile of the environment in government, civil society, and private sector remains. The key issues to be addressed include, but are not limited to: inadequate funding; lack of respect for local institutions; trivialisation, marginalisation and stigmatisation of traditional knowledge; lack of respect for local capacity and expertise; lack of political will; lack of recognition of ICCAS; limited capacity in the management of landscapes; lack of supportive policy and legislative

framework; institutional conflicts (modern versus traditional); manipulation of local communities by private sector and political elites; extractive versus rights-based sustainable development; fragmented policies and laws; and the silo and sector approach.

8. JUDGEMENTS

8.1 Case law and judgments that support or hinder local communities' rights

There are few cases and judgments regarding local communities' rights to natural resources in Zimbabwe. As previously noted, community rights over natural resources are mainly reflected through economic, environmental, social, and cultural rights. Until recently, these rights were not recognised as human rights. This non-recognition made it very difficult for communities and civil society organisations to approach courts of law for determination through strategic or impact litigation as a way of asserting community rights.

Despite these challenges, there are some public interest litigation cases that have been taken up by civil society organisations like the Zimbabwe Environmental Law Association (ZELA). One such case is ***Malvern Mudiwa and Newman Chiadzwa vs Mbada Mining (Private) Limited and Others***.[5] This case was brought before the courts through an urgent chamber application. The commencement of proper diamond mining activities in the Marange Diamond Fields in 2007 necessitated the relocation of communities from the Chiadzwa area to Arda Transau, about 80km from Marange. Although informal talk of relocation had been on-going since 2007 though media, police, and soldiers providing security in the area, it was not until the week beginning the 9th December 2009 that the Chiadzwa community was officially notified that they were being relocated to the peri-urban area of Arda Transau.

When official notice regarding the impending eviction was made, ZELA submitted an urgent chamber application to interdict the diamond mining companies that were operating in Chiadzwa (at that stage Mbada Mining (Private) Limited, Canadile Miners (Private) Limited, and Zimbabwe Mining Development Corporation), in addition to the Ministry of Mines and Mining Development, Ministry of Local Government, and Ministry of Urban and Rural Development, to stop the relocation of communities from Chiadzwa to Arda Transau before issues of compensation were finalised.

The application was dismissed on the basis that it was not urgent, as mining activities had commenced in 2007 in Chiadzwa, and communities should have known that they were going to be relocated. It is asserted that the learned judge erred in this decision, as there was no official notice of the relocation until 7 December 2009. After the dismissal of the urgent chamber application, ZELA proceeded with the matter through a normal court application. Although the case was filed in 2010 and nearly 2,000 families have since been relocated from Chiadzwa to Arda Transau, the matter is still to be settled.

[5] HC 6334/ 09

8.2 Major precedents set in relation to the rights of local communities

Although the urgent chamber application discussed above was dismissed, it had some positive results. The information that was provided under oath by the Ministries of Mines, Local Government, and Urban and Rural Development, and by the mining companies proved to be critical for both ZELA and the Chiadzwa Community Development Trust in their advocacy work. The court action resulted in the inadvertent disclosure by the Ministries and the mining companies of their plans with regard to the relocation process. When the government and the mining companies started the process of relocating communities in 2009, they had not built any houses or social amenities at the proposed relocation site in Arda Transau. The relocated families were being relocated into old tobacco barns, with no schools and clinics, thereby affecting the relocated communities' rights to health and education. Thus with the support of advocates, the communities used the information disclosed in application to hold mining companies and government accountable, as the government and mining companies had promised in their affidavits that communities would not be relocated before proper houses and social amenities were built.

9. IMPLEMENTATION

This section looks beyond the laws and policies to focus on their implementation in the Zimbabwean context.

9.1 Key factors that contribute to or undermine effective implementation of supportive provisions

In Zimbabwe the implementation of legal and policy provisions for local communities varies depending on the sector. Generally, there seems to be some progress in so far as safeguarding the interests of local communities in sectors such as wildlife, through programmes like CAMPFIRE. However, much work needs to be done in the mining, forestry, and other sectors. Key implementation challenges include:

- Lack of political will from the government and other partners to implement legal and policy provisions supporting local community efforts in biodiversity conservation;
- Lack of capacity by the state, local communities and stakeholders to implement and enforce the various laws and policies and especially in the area of access and benefit sharing;
- Limited resources to operationalize the key indigenous and local community related provisions in the national laws and policies;
- Weak institutional structures within government to support local community participation in key sectors such the extractive industry;
- Lack of systematic and comprehensive communication, education and public awareness (CEPA) initiatives to address the CBD and Nayoga Protocol issues for local communities;
- Trivialisation and marginalisation of traditional knowledge relevant for the conservation of biodiversity; and,
- Conflicting positions among sectoral laws and policies; e.g., mining law versus environment laws.

One of the major handicaps for most legislative frameworks in Zimbabwe is that despite progressive provisions and good intentions, most legislative and policy provisions are not implemented. Implementation and enforcement of legislation and policy is often hindered by political, economic, and social factors. Some of the economic factors include shortages of funds, fuel, transport, and equipment. Political factors include government interference in operations of public bodies and local authorities. On the part of communities, lack of knowledge about these laws and how to claim their rights also stifle implementation and enforcement of laws.

In the water sector, although water legislation provides for equitable use and distribution of water resources, in practice many communities in rural and urban areas still find it difficult to access clean and potable water. This is more pronounced in rural communities where, in some cases, local people walk long distances to access water. Various parts of Zimbabwe are also affected by drought, exacerbating the need for adequate water supplies.

Responsible institutions such as the ZINWA and Catchment Councils have limited resources to ensure implementation of laws and policies, such as the equitable distribution of water resources. It is often difficult for them to monitor and inspect the use of water by licensed users to assess compliance with water abstraction permits. As a result, some private operators extract more water than they are permitted, which results in deprivation of downstream communities. Water shortages are worse in urban areas, where local authorities are failing to provide adequate clean water to residents, a situation that has greatly compromised the health of residents, and is a violation of the right to water.

Another implementation gap in water legislation with implications on communities is that the procedures for public consultations in decision-making are weak. An example is the requirement in Section 12(1) of the **Zimbabwe National Water Authority Act** for ZINWA and the Catchment Councils to prepare outline plans for river systems by consulting authorities. Community consultations are relegated to the last stages, when the plan is already in draft form and to be published for objections and representations. In practice, communities should be involved early on in the process, and consulted in drafting such plans. It is critical for communities to be involved in the process of planning on how to use water in the river system.

The **Water Act** and the regulations do not touch on gender issues. For example, the **Water (Catchment Councils) Regulations 2000 (Statutory Instrument 33 of 2000)** and the **Water (Subcatchment Councils) Regulation 2000 (Statutory Instrument 47 of 2000)** do not take into account representation of special and vulnerable groups like women and youth in water management institutions such as Catchment Councils and Sub-catchment Councils. The regulations merely state that stakeholder groups include communal farmers, RDCs, commercial farmers, small-scale farmers, industries, resettlement farmers, and urban authorities. In this day of gender consciousness, exclusion of women is a major gap.

Another gap is that the right to water is treated as a right based upon progressive realisation and availability of resources. The right is therefore difficult to enforce since it depends on availability of resources. Courts may find it hard to promote the enforcement of this right in cases where government pleads lack of resources. Generally, the implementation of environmental rights is problematic in many jurisdictions, and communities are facing water shortages in many parts of the country.

10. RESISTANCE AND ENGAGEMENT

10.1 Local communities' engagement with or resisting of laws and policies

Communities have been using a number of tools and methods, supported by civil society organisations, to understand how the exploitation of natural resources is violating their environmental, economic, social, and cultural rights, and the possible actions that they can take to promote and advance these rights. Methods include capacity building, registration of community-based organisations to exist as legal entities, research, and strategic or impact litigation. These tools have been a catalyst for resistance and engagement by communities, and have been applied in areas such as the Marange Diamond Fields, the Great Dyke and the black granite mining areas of Mutoko.

Communities have experienced suffering as a result of the actions of state- and private-owned companies (both national and international) extracting resources in their areas. The building of the capacity of communities has raised awareness on the violations of economic, environmental, social, and cultural rights as a result of mining activities. Community capacity-building has increased awareness within the community and other relevant stakeholders of the causal links between mining and environmental degradation, air and water pollution (linking this to violations of their rights to a clean and healthy environment), land grabbing of valuable agricultural and grazing land (violating their economic rights and the right to an adequate standard of living that includes adequate food), and that involuntary displacement and relocation without consultation, adequate information, and without fair and adequate compensation is a violation of the community right of access to information.

Various advocacy groups seek to promote community rights to land in Zimbabwe; among them are Women and Land, which promotes the rights of women to access and use land for economic benefit, and the African Institute for Agrarian Studies, which carries out research and advocacy activities on land and agriculture.

In the past, community protests have affected some change. The Fast Track Land Reform Programme was triggered by the Svosve community's protests against government's failure to promote equitable distribution of land, a process joined by other communities wanting access to fertile land that was mostly in the hands of white commercial farmers. Government responded by launching the Fast Track Land Reform Programme, and putting in place laws and policies to protect the land occupiers, such as the **Land Acquisition Act** and the **Rural Land Occupiers Act**. However, some of the violence that ensued resulted in human rights violations by state actors and war veterans against commercial farmers.

10.2 Broad social movements or trends

Communities are increasingly engaging with mining companies and the government through the development of community trusts in the mining sector. In the Marange Diamond Fields, the Chiadzwa community established its own trust, the Chiadzwa Community Development Trust (CCDT), while in Mutoko, the community were supported to develop the Mutoko North Community Development Trust. In addition, communities in the Great Dyke are currently registering the Great Dyke Communities Network. The registration of such trusts was a strategy to counter complaints by the State and the private sector that community

marginalisation from natural resources governance was a result of their non-existence as legal entities. In particular, the private sector has consistently emphasised that the barrier in dealing with communities has been the latter's non-existence as legal entities, which impacts their ability to make binding decisions over natural resources such as minerals.

The importance of communities being constituted into legal entities is aptly captured by Griffin, who notes: "until communities are organized and formally recognized through the setting up of their own community based organisations, they cannot effectively engage government and the private sector" (1999). As legal entities that are recognised by the law, communities will theoretically be able to challenge mining laws, policies, and decisions that do not promote their interests. Through being constituted into legal entities that are recognised by law, communities also develop the confidence to engage other stakeholders involved in mining.

Community Based Organisations (CBOs) that have registered as legal entities such as CCDT, Mutoko North Community Development Trust, and Great Dyke Communities Network, have embarked on advocacy campaigns as a way of asserting and claiming their rights. These advocacy campaigns have been targeted towards a number of stakeholders that they regard as being directly linked to the violation of their environmental, economic, social, and cultural rights, and those that could play a role in addressing these violations. In Mutoko, for example, communities engaged the black granite mining companies, the Ministries of Mines and Mining Development, Local Government, and Rural and Urban Development, the Mutoko Rural District Council, the Member of Parliament, and the Ministry of Indigenisation and Economic Empowerment.

10.3 Are some local communities 'managing' better than others?

Some communities are managing to resist and engage with external stakeholders better than others. From the three community trusts that ZELA is actively working with, namely CCDT, Mutoko Community Development Trust, and Great Dyke Communities, CCDT is the most active and most successful, and for a variety of reasons is widely regarded as a model of community empowerment in Southern Africa. In particular, it has been constituted the longest. CCDT was registered in 2009, while the Mutoko Trust was registered in 2012, and the Great Dyke Communities Network has yet to be officially registered.

In addition, diamond mining in Marange is extremely topical in Zimbabwe. The area is very rich in diamond resources, and with this brings a hope that Marange diamonds will play a central role in efforts to democratise Zimbabwe. With attention at the national, regional, and international levels, it is inevitable that organisations working in the area like the CCDT are better supported and receive more attention.

The Chiadzwa Community Development Trust has, in its Deed of Trust, a number of objectives related to community participation in the policy and decision-making processes related to natural resources governance. They include the following:

a) To contest the proposed compulsory relocation of the beneficiaries or any portion of their communities from the areas they are currently inhabiting;
b) To advocate and fight for the sustainable exploitation of natural resources in a manner that does not cause irreversible harm to the environment;

c) To fight against any conduct that that undermines the rights, standard of living, and way of living of the beneficiaries;
d) To lobby and fight for the rehabilitation of the environment that has been damaged by mining activities in the area;
e) To lobby and advocate for the realisation of real interests by the beneficiaries in any ventures exploiting natural resources in the area;
f) To lobby for and ensure that private companies that exploit natural resources in the area enter into benefit-sharing arrangements with the Trust of the local community, which promotes, inter-alia, infrastructural development and environmental conservation;
g) To initiate, support, and encourage community-based initiatives that aim for poverty alleviation of the beneficiaries in their respective wards, and the sustainable development of the respective areas;
h) To acquire or hold shares in, and form companies or such enterprises as may be deemed necessary for the purpose of participating individually or in partnership with other persons, in business ventures meant to benefit the beneficiaries.

In the Marange area, CCDT engaged the diamond mining companies; the Rural District Council; the Ministries of Local Government and Urban and Rural Development; the District Administrator; and the Provincial Governor – all of whom played a role in the involuntary displacement and relocation of the Chiadzwa community.

Advocacy campaigns were aimed at ensuring the relocation was done in accordance with the **United Nations Basic Principles and Guidelines on Development Based Evictions and Displacement**. The Environmental Management Agency was also targeted by community advocacy campaigns for allowing the diamond mining companies to commence mining before undertaking an EIA. In addition, the Environmental Management Agency was asked to address their failure to investigate water pollution resulting from diamond mining activities polluting the Save and Odzi Rivers (ZELA 2012). The **Parliamentary Portfolio Committees on Mines and Energy and Environment and Natural Resources** were also targeted. These committees have oversight roles for the Ministries on Mines and Mining Development and Environment and Natural Resources. The objective of targeting these committees was for them to bring their influence to the two Ministries to address the negative impacts of diamond mining on the environmental, economic, social, and cultural rights of the Chiadzwa community. **The Ministry of Labour and Social Welfare** was also targeted to ensure that members of the Chiadzwa community were not overlooked in the employment opportunities arising from diamond mining, and also in addressing labour rights violations. The **local Member of Parliament** was also targeted, as the Chiadzwa community wanted to know what their legislator was doing to address the negative impacts of diamond mining on the communities' economic, environmental, social, and cultural rights.

In the Chiadzwa Diamond Fields, some community members are actively resisting the violation of their economic, environmental, social, and cultural rights by mining companies. For example, Malvern Mudiwa mobilised communities to resist relocation to Arda Transau by diamond mining companies before issues of compensation were discussed and agreed. After the dismissal of the urgent chamber application, ZELA provided the communities with information that had been supplied by the mining companies and the government

concerning their plans with regards to the relocation process. The government and mining companies had promised under oath that they were not going to relocate communities before accommodation and other social amenities were built. Armed with this information, Mudiwa mobilised communities to resist the relocation before these preconditions were met. For this, Mudiwa, who was by then the acting Chairperson of the CCDT, was charged with criminal nuisance (see *State v Malvern Mudiwa CRB 3750/ 10*), in terms of Section 46 of the **Criminal Law (Codification and Reform)** (Chapter 9:23). Mudiwa was represented by lawyers instructed by ZELA, and has since been removed from remand. The State will proceed by way of summons should it decide to pursue the charge.

Generally, communities that receive the support of local government are more likely to be successful. This has been useful in CCDT's case, where a Member of Parliament for the area was very vocal about the negative impacts of diamond mining on community livelihoods at the local and national level, and has been supportive of CCDT's work.

Using the media to lobby for community interests

Newsday, 5 August 2010

Include local community rights in new constitution – environmentalists

Staff Writer

Environmentalists have called upon Zimbabweans to advocate for clauses in the new constitution that will respect the rights of local communities to their natural resources as they are the owners and custodians of the environment.

Gladman Chibememe, of the Chibememe Earth Healing Association, Shamiso Mtisi and Munuso Dhliwayo of the Zimbabwe Environmental Law Association, this week said Zimbabweans should demand rights to an environment that is not harmful to their health.

Chibememe said if local communities who lived in mineral-rich areas like Chiadzwa, or wildlife-endowed areas like Gonarezhou were to benefit from natural resources in those communities, they would feel encouraged to preserve them.

"The new constitution should capture words like 'local communities' to make sure their rights over natural resources around them are secured. That would also make them true custodians of the environment," said Chibememe.

He said local communities faced losses associated with biodiversity, like loss of crops and livestock due to attacks by wild animals and as such, they deserved to benefit from those environments.

Dhliwayo said every Zimbabwean should have rights to access to environmental and natural resources management information.

He said people should demand the rights to have the environment and natural resources protected for the benefit of present and future generations through reasonable legislative and other measures that prevented pollution and ecological degradation.

"Access to environmental information is important to ensure that people are aware of what is happening in the environmental fields, and of any environmental harm," said Dhliwayo.

Mtisi, an environmental lawyer, said people should demand that the new constitution include the right to a safe working environment.

He said while the current legislation, the Factory and Works Act, provided for a safe working environment, there were links that were not provided for in the constitution. "This is a critical issue," Mtisi said.

He said the problem with environmental legislation was that it was not easily enforceable.

Gladman Chibememe

SOURCE:- NEWSDAY, 5 August 2010

Jabula INTERNATIONAL CONFERENCE 2010 WWW.JABULANI.CC.ORG, Wednesday 11 August - Sunday 15 August 2010

Photo 10.1 News article highlighting the work of environmentalists in the media to lobby for community interests

11. LEGAL AND POLICY REFORM

11.1 Institutional, legal and/or policy reforms required

The **Constitution** contains progressive provisions, which, if well implemented, could result in the recognition of community rights in natural resources management. The Constitution recognises environmental, economic, social, and cultural rights as fundamental rights that are justiciable. What is now required is for these progressive provisions in the **Constitution** to cascade into laws and policies related to natural resource management. Below are a number of suggested reforms with respect to some of the key areas of law and policy that impact on rights of local communities in Zimbabwe.

(i) Land

With respect to land laws and policies in Zimbabwe:

- Government must ensure that the **Land Commission** is established as per the **Constitution**. The Land Commission should deal with multiple land ownership through a land audit to establish ownership of land. There is need to assess and release more land for local communities that did not benefit from the original land reform programme, or those that have been displaced by others who own many farms;
- Ensure that all land laws are in line with the **Constitution** including the **Land Acquisition Act** and other laws;
- The **Constitution** must be used as a way to enhance secure tenure rights for local communities by selling land, where possible, to local communities, at low prices;
- The role of traditional leaders and local authorities in the management of land should be clearly stated to prevent conflicts and overlaps.

With respect to the role of land-related civil society organisations in Zimbabwe:

- Civil society organisations must support local communities that are displaced by large-scale agricultural companies and mining companies. These are communities that often lose their land and sources of livelihood. In such cases, the best ways to promote justice may be litigation or conflict resolution.

(ii) Water

With respect to existing laws and policies managing the use of water:

- Enhance the implementation and enforcement of all progressive provisions of the **Water Act** that seek to promote equitable access to and distribution of water resources in Zimbabwe. This can be done through provision of adequate budgets to key institutions such as ZINWA, Catchment Councils, and local authorities to develop water infrastructure and promote monitoring compliance with water management standards;
- Promote transparent administrative procedures and the stamping out of corrupt practices and mechanisms amongst responsible government departments; and,
- Promote community participation in legal and policy reform processes such as the development of the Water Policy in Zimbabwe, so as to enhance access to information.

With respect to the work of water-related civil society organisations in Zimbabwe:

- Civil society organisations must improve their advocacy and educational work on community rights in the water sector, as communities that are aware of their rights are more likely to demand and claim those rights, forcing decision makers and water management institutions to take action and enhance provision of water resources;
- Where possible, civil society organisations should make an effort to test the justiciability of the right to water in the **Constitution** by taking public interest litigation cases based on access to water and inequitable distribution to court. Such cases can also test if the judiciary in Zimbabwe is ready to tackle environmental, economic, social, and cultural rights cases; and

- Community-based monitoring of the implementation of water laws and policies should be encouraged. This can enhance community capacity to identify problem areas and approach decision makers for redress.

(iii) Mines and Minerals

With respect to mineral exploitation, the Draft Minerals Policy and the proposed new **Mines and Minerals Act** offer a very good opportunity for reforms. The proposed new Mines and Minerals Act should:

- Recognise mining communities as key stakeholders in mining;
- Make provisions for access to information regarding the exploration and exploitation of minerals;
- Include communities in participation in the policy and decision-making processes like the Mining Affairs Board;
- Provide for fair and adequate compensation for communities evicted to make way for mining activities;
- Forbid the arbitrary eviction of communities without a court order;
- Provide clarity on competing land uses between mining and other uses such as agriculture;
- Address the gendered impacts of mining on women; and,
- Provide more specific provisions when it comes to community participation (rather than relying on implied provisions).

(iv) Access and Benefit Sharing

With respect to access and benefit-sharing provisions in Zimbabwe, the following is recommended:

- There is need to enhance the implementation and enforcement of the **Statutory Instrument 61 of 2009 (Access to Indigenous Genetic Resources and Genetic Resource-based Knowledge) Regulations** and to align it with the **Nagoya Protocol** and **Constitutional** provisions requiring the State, its agencies, and stakeholders to ensure that local communities derive equitable benefits from their resources;
- Ensure the full and effective participation of indigenous and local communities in the formulation, development, and implementation of access and benefit-sharing related policies;
- Government and relevant stakeholders should support the establishment of a **Local Community Competent Authority** to work with the **National Access and Benefit Sharing Competent Authority** consistent with **Article 14(3)(a) of the Nagoya Protocol**. The Government should assist local communities to set up their own competent authority with which government and other stakeholders will interact when requiring prior, informed, consent of communities, and negotiating mutually agreed terms;
- Ensure that the capacity of local communities is built and/or strengthened to enable them to fully understand ABS issues and genuinely participate in the implementation of the CBD and the Nagoya Protocol;
- Government should enforce prior informed consent and mutually agreed terms requiring local community participation in all Access and Benefit Sharing related

matters, as well as those involving access to their genetic resources and associated traditional knowledge;

- Appropriate and genuine and sustainable partnership with local communities in the ABS arena should be developed.
- Development and strengthening of community based institutions and/or organisations as competent authorities of local communities for the implementation of ABS at national level.
- Access and benefit sharing and traditional knowledge-related laws and policies in different sectors such as environment and agriculture should be harmonised, and local community rights over genetic resources and traditional knowledge should be strengthened; and,
- Deliberate efforts should be made to set up and implement local community-led and -managed on-site Access and Benefit-Sharing models in the key sectors of environment and agriculture.

(v) Protected Areas

For the protected area regime in Zimbabwe, the following is suggested:

- Since the current protected area legal framework does not explicitly provide for local communities to establish Indigenous Peoples' and Local Communities' Conserved Territories and Areas, there is a need for protected area legislation to be reviewed to take account of protected areas under the custodianship of indigenous and local communities; and

- There is need to devolve more of the decision-making powers in CAMPFIRE to local communities. The accrued revenue from CAMPFIRE should be channelled to local communities to ensure that there is a greater impact of such programmes to local communities.

(vi) Forests

For the forest sector, reforms should target the amendment of the **Forest Act** and the **Communal Land Forest Produce Act**. They must:

- Provide for community participation in policy and decision-making processes like the Forestry Commission;
- Recognise communities as key stakeholders in forest management;
- Provide for community consultations before decisions are made; and,
- Recognise right of access to information for communities.

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