

## CHAPTER 2: HISTORICAL CONTEXT AND THE LEGAL FRAMEWORK FOR ENVIRONMENTAL PROTECTION AND SUSTAINABLE DEVELOPMENT

---

During the colonial era, Zimbabwe's legal system primarily served the white minority and was more inclined towards economic interests, often at the expense of environmental concerns. The law's coercive power was mobilised by the colonial governments to advance the extraction of natural resources. The legal framework and consciousness developed within this context.<sup>31</sup> Zimbabwe's legal framework has evolved to address environmental protection and sustainable development. The principal governing environmental frameworks in Zimbabwe are the 2002 Environmental Management Act (EMA) and the 2013 Constitution. EMA provides a comprehensive legal framework for environmental management. It emphasises pollution prevention, ecological conservation, and sustainable resource use.<sup>32</sup> Environmental rights are specifically recognised in the 2013 Constitution. Among these rights is the right to a healthy environment that includes sustainable use of natural resources, promoting economic and social development, preventing pollution, and encouraging conservation.<sup>33</sup> This chapter considers how historical legacies and legal frameworks form the basis of judicial decisions for sustainable development and environmental protection in Zimbabwe. By examining the defining context and the constitutional and statutory provisions one can explore the background which influences judiciary decisions and impacts on balancing the crucial aspects of environmental protection and sustainable socioeconomic development.

Understanding Zimbabwe's historical background is crucial for analysing challenges and opportunities in environmental protection

---

<sup>31</sup> Susanne Verheul, *History, Authority and the Law in Zimbabwe, 1950–2002*, Cambridge University Press, 2021.

<sup>32</sup> Environmental Management Act [Chapter 20:27].

<sup>33</sup> Section 73 Constitution of Zimbabwe.

and sustainable development in Zimbabwe. It sheds light on the impacts of historical dynamics on contemporary environmental laws, practices and governance systems.

The history of environmental protection in Zimbabwe reveals a complex interplay between colonial legacies, post-independence policies, and global influences. During the colonial era, natural resources were exploited without regard for environmental consequences, leading to degradation and loss of biodiversity.<sup>34</sup> In colonial Zimbabwe, environmental protection laws and policies were influenced by the land tenure system and the economic interests of the colonial administration. The Land Tenure Apportionment Act of 1930 and its amendments, including the Native Husbandry Act of 1951, were key pieces of legislation during this period. The colonial government promulgated laws that disregarded the significance of environmental impact assessment programmes.<sup>35</sup> These laws were primarily designed to manage land use and ownership, but they often overlooked the environmental implications and sustainable development. Numerous laws controlled the extraction of natural resources, and several industry-specific policies restricted certain activities that harmed the environment. Most of these laws facilitated the exploitation of natural resources without sustainable management practices. The limitations of colonial laws such as the Natural Resources Act [Chapter 20:13], the Atmospheric Pollution Prevention Act [Chapter 20:03] and the Hazardous Substances and Articles Act [Chapter 15:05] were significant. They prioritised economic development over environmental protection. There was a lack of sound environmental policies that considered long-term ecological impact.

---

<sup>34</sup> M T Macheke, Environmental management and practises in Zimbabwe's Chivi district: A political ecology analysis, Cogent Social Sciences, Volume 7, 2021.

<sup>35</sup> I Makanyisa, Chemhuru M and E Masitera, The Land Tenure System And The Environmental Implications On Zimbabwean Society: Examining The Pre-Colonial To Post-Independent Zimbabwean Thinking And Policies Through History And Philosophy, 2012.

In 1941 the National Resources Act was enacted whose main objective was to control the use of resources. However, it could not be applied in the communal areas that covers about half of the total land area of Zimbabwe, since it was enforced via legal title to land. After gaining independence in 1980, The Natural Resources Act continued being used and was repealed and replaced by the EMA in 2002.

Land reform policies after independence while addressing historical imbalances, also impacted natural habitats. From the late 1990s Zimbabwe has been confronted by a plethora of socio-economic and environmental deterioration which has been characterised as the Zimbabwean crisis. Economic pressures, political instability, and system weaknesses have hindered the effectiveness of environmental conservation efforts. Understanding the historical background is crucial for analysing Zimbabwe's challenges and opportunities in environmental protection and sustainable development.

The enactment of EMA in 2002 and the 2013 Constitution represent a shift from a reactive to a proactive legal framework and measures for environmental conservation in Zimbabwe. The post-independence period saw a shift towards conservation and sustainable development, with initiatives like the creation of national parks and the implementation of environmental regulations.

EMA repealed several outdated laws. It replaced a fragmented system of environmental laws with a more integrated and comprehensive approach to environmental protection. EMA marked a significant change by providing a harmonised institutional, legal, and policy framework for sustainable environmental management. It aimed to address the requirements of sustainable development and set a solid platform for the enforcement of environmental management at a higher level than before. The Act aims to prevent pollution, promote

conservation, and ensure ecologically sustainable development.<sup>36</sup> Key provisions include establishing the Environmental Management Agency (EMA) to oversee environmental matters and the preparation of a National Environmental Plan and other management plans. Importantly, section 4(1)(a) of the Act provides that “[e]very person shall have a right to a clean environment that is not harmful to health.” In addition, section 4(1)(b) of the Act provides:

Every person shall have a right to – ....

(b) access to environmental information, and protect the environment for the benefit of present and future generations and to participate in the implementation of the promulgation of reasonable legislative policy and other measures that –

(i) prevent pollution and environmental degradation; and

(ii) secure ecologically sustainable management and use of natural resources while promoting justifiable economic and social development.

This aligned Zimbabwean law with various international conventions. It upholds several environmental law precepts connected to the environmental rights clause in the Constitution. EMA acknowledges internationally recognised environmental law principles, such as intergenerational equity, polluter pays and public participation principles.<sup>37</sup> However, it is argued that it left out key principles, such as the public trust theory, environmental justice and precautionary principles.<sup>38</sup>

As Murombo asserts, “land is part of the natural resources of a country, and without sustainable management and use of natural resources, a country may not be able to promote and fulfil other

---

<sup>36</sup> Soyapi (n.17 above).

<sup>37</sup> J Tsabora, *Unpacking the Environmental Rights Clause in the Zimbabwean Constitution*, ZIMLII, 2020.

<sup>38</sup> *Ibid.*

human rights.”<sup>39</sup> Despite the many challenges bedevilling the nation, Zimbabwe still has an extensive natural resource base that consists of mineral extraction, agricultural activities, water resources, and wildlife. Approximately 70% of Zimbabweans live in rural areas and rely on these natural resources for livelihood. The country’s economy remains closely tied to its environment and natural resource base.<sup>40</sup> Thus, Murombo extends that if Zimbabwe was able to sustainably manage its natural resources in the spirit of the state’s trusteeship over natural resources, it could have been almost out of its economic whirlpool. Some current regulatory frameworks and resource laws, such as mining legislation, have been criticised for perpetuating unequal access to resources and environmental injustices.<sup>41</sup> Moreover, the complexity and cost of environmental compliance mechanisms can be prohibitive for ordinary people, suggesting a need for reform and decolonisation of environmental law to align with sustainability and equitable resource access.

EMA introduced robust enforcement and compliance mechanisms. In Zimbabwe, certain projects are not allowed to commence without first obtaining an environmental impact assessment (EIA) certificate. EMA and SI 7 of 2007 govern EIAs. These regulations require specified projects to complete an EIA process before execution. EIA assesses potential environmental, social, and economic consequences of proposed projects, aiming to identify and prevent environmental degradation caused by human activities. Implementing a project without an EIA report is punishable by a fine, imprisonment (up to five years), or both.

Furthermore, in 2013, Zimbabwe enacted a new Constitution that included an environmental rights clause and made the Constitution

---

<sup>39</sup> Murombo (n.13 above).

<sup>40</sup> Madembwe (n.20 above).

<sup>41</sup> Ibid.

the overarching legal framework in the country. This constitutional recognition of environmental rights underscores the proactive stance Zimbabwe has taken to ensure the protection and management of its natural resources and environment. The Constitution's environmental rights are also recognised as the right to a healthy environment.

These rights are comprehensive, covering health, well-being, and ecological sustainability. The constitutional mandate to protect the environment for future generations recognises the concept of intergenerational equity. It emphasises that the current generation has a stewardship role over the environment that must be preserved for those who come after. The constitution's call for "reasonable legislative and other measures"<sup>42</sup> implies a dynamic approach where laws and policies must evolve with changing environmental conditions and advance sustainable socio-economic development to "achieve the progressive realisation of the rights"<sup>43</sup> set out in the Bill of Rights.

The Constitutional framework aligned Zimbabwean law with global developments by recognising the right to a healthy environment. Unlike the previous constitution which lacked an elaborate Bill of Rights, the 2013 Constitution explicitly acknowledges environmental rights.<sup>44</sup> The inclusion of environmental rights in Zimbabwe's Constitution was influenced by global movements for environmental protection. Notably, the 2002 Environmental Management Act initially introduced these rights before they became a constitutional provision.<sup>45</sup>

With an economy heavily reliant on natural resources, balancing development and environmental protection is crucial for Zimbabwe.

---

<sup>42</sup> Section 73 (2).

<sup>43</sup> Ibid.

<sup>44</sup> Madembwe (n.20 above).

<sup>45</sup> I Chirisa and A Muzenda, *Environmental Rights as a Substantive Area of the Zimbabwean Constitutional Debate: Implications for Policy and Action*, 2013.

Despite the constitutional recognition of environmental rights and the mandate on state institutions to respect, protect, promote, and fulfil these rights, there is limited scholarship critiquing the judiciary's development of these rights in relation to its court rulings.<sup>46</sup> The judiciary's rulings can significantly impact the livelihoods of those dependent on these resources.

Section 192 provides that '[t]he law to be administered by courts of Zimbabwe is the law that was in force on the effective date, as subsequently modified. Importantly, this has meant that environmental rights have always existed as part of the common law of nuisance and delict.

In common law, environmental rights existed as part of the common law of nuisance and delict. Thus, before the 2013 Constitution, the existence of environmental rights was established by the law of delict to the extent that people might fairly expect to live in a clean environment. Where the negligent acts of another party, rooted in a failure to honour the duty of care, compromised this and led to damages occurring, the harmed party had a right of action to pursue redress. Similarly, environmental rights could be inferred to exist from the law of nuisance. This body of common law permitted legal action to be taken against a party that created a nuisance that led to a loss of patrimony or in cases where the nuisance persisted. The law of nuisance was significant because it established the right to an environment that does not pose risk to one's health or well-being. According to Madebwe the advantage of common law as an environmental protection regulatory framework was that the delictual basis of the rights meant that citizens were likely aware of the right of action created where they suffered harm, as part of their existing knowledge of the law of delict and nuisance.<sup>47</sup> Such knowledge would

---

<sup>46</sup> Ibid.

<sup>47</sup> Madebwe (n.20 above).

typically be motivated by financial self-interest, as citizens would be aware of the fact that violations of their rights would lead to the payment of compensation. The promise of compensation also meant that citizens were motivated to act in protection of their rights and, by extension, the environment, whenever environmentally deleterious activities occurred.<sup>48</sup> This meant that those acting in a potentially detrimental manner were effectively deterred from doing so by the fear of delictual actions and the potential for compensation to rights holders. The advantage of this approach was that environmental protection was within established law fields with clear principles.

The drawback of common law, however, was that it's delictual and nuisance approach—which applies to rights-based actions was frequently on individuals' and citizens' ability to seek redress based on these rights. The state anticipated that affected persons would seek private remedy in cases where their rights were violated. Furthermore, the state would not give the injured party instructions on how to apply the compensation award once it had been obtained. Thus, as Murombo explains, “it was conceivable that once compensation awards were secured, they would not go toward restoring the environment to its former state for the public benefit.” In this context, there was limited *locus standi* and state motivation to assist litigants in meeting the costs of such litigation for them to bring actions which could reasonably be regarded as being for citizens' personal gain. Environmental rights and the *locus standi* are now extended by section 73 and section 85, respectively.<sup>49</sup>

Environmental protection needs to be viewed from a broader perspective than national politics due to the nature of both national and global environmental concerns. Zimbabwe's legal framework on environmental protection is influenced by several international treaties

---

<sup>48</sup> Ibid.

<sup>49</sup> Constitution of Zimbabwe, 2013.



and conventions. It is a party to Multilateral Environmental Agreements (MEA). In accordance with section 46(1)(c)<sup>50</sup> when interpreting the chapter the Declaration of Rights<sup>51</sup>, a court “must take into account international law and all treaties and conventions to which Zimbabwe is a party” and section 327(6)<sup>52</sup> that “every court and tribunal must adopt reasonable interpretation of the legislation that is consistent with any international convention, treaty or agreement which is binding on Zimbabwe.” MEAs are legally binding international conventions and treaties signed to address common environmental challenges collectively.

Some key agreements that Zimbabwe is a part of are the United Nations Convention on Biological Diversity (CBD), the global agreement on biodiversity conservation that emphasises the country’s commitment to protecting biological diversity, promoting sustainable use of its components, and ensuring fair and equitable sharing of benefits arising from genetic resources. The Basel, Rotterdam, and Stockholm (BRS) Conventions aim to manage hazardous chemicals and wastes. The Montreal Protocol treaty aims to phase out substances that deplete the ozone layer, and Zimbabwe’s involvement is crucial for global efforts to protect the ozone layer and climate. The Ramsar Convention aims to protect wetlands.

The United Nations Conference on the Human Environment, held in Stockholm in 1972 may rightly be called the *magna carta* of environment. This was the first major attempt to solve the global problems of conservation and regulation of the human environment at the international level. Principle 1 of the Report states that:

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-

---

<sup>50</sup> Constitution of Zimbabwe.

<sup>51</sup> Chapter 4 Constitution of Zimbabwe.

<sup>52</sup> Constitution of Zimbabwe,

being and he bears a solemn responsibility to protect and improve the environment for present and future generations.<sup>53</sup>

Subsequently, came the Rio Declaration. This declaration, while reaffirming the Stockholm Declaration, sought to build upon it, to establish a new and equitable global partnership by creating new levels of cooperation among states, key sectors of societies and people.

To support sustainable development, regional environmental trends have also shifted towards the recognition of environmental rights. The revised African Convention on the Conservation of Nature and Natural Resources recognises the principle of people's environmental rights in Article III. In line with the treaty's stipulations, member nations of the Southern African Development Community (SADC) "agree to cooperate in the areas of... natural resources and the environment."<sup>54</sup> These provisions presuppose some degree of legal harmonisation in member states' cooperation in environmental endeavours if not uniformity, in the ideologies and laws in the areas of co-operation. The provisions of the African Convention and the SADC treaty are both complemented by the African Charter of Human and Peoples' Rights (African Charter). Article 24<sup>55</sup> provides that '[a]ll peoples shall have a right to a general satisfactory environment favourable to their development'. The African Union Constitutive Act also furthers the 'promot[ion] [of] sustainable development at the economic, social and cultural levels and the integration of African economies'.<sup>56</sup> These regional advancements have a significant impact on nations' decisions to incorporate environmental rights into their constitutions to support sustainable development and address global environmental issues that transcend political and geographical demarcations.

---

<sup>53</sup> Report of the United Nations Conference on the Human Environment, Stockholm.

<sup>54</sup> African Convention on the Conservation of Nature and Natural Resources, Article III.

<sup>55</sup> African Charter of Human and Peoples' Rights, Article 24.

<sup>56</sup> African Union Constitutive Act, Article 3.

Protecting the environment in Zimbabwe is an international and regional trend toward harmonising environmental laws and rights. These agreements play a significant role in shaping national policies, strategies, and legislation related to environmental protection and sustainable development in Zimbabwe.

Regardless of its gaining momentum, the concept of sustainable development is still a norm of soft law and has not attained the status of customary international law.<sup>57</sup> Some have disregarded the concept's usefulness in discussions of international law discourse altogether, arguing that as soft law, the concept has not been widely accepted and uniformly deployed in state practices. It has been argued as vague, problematic, and only an "emergent legal principle."<sup>58</sup> Notwithstanding these arguments, sustainable development is the most important accepted benchmark of international environmental law that has gained broad acceptance, infiltrating national constitutions and regional environmental conventions to influence domestic environmental laws and policies.

The law provides mechanisms, frameworks, and accountability measures to achieve what has been referred to as Sustainable Development Goals (SDGs)<sup>59</sup>. SDGs are part of a resolution called the 2030 Agenda or "Transforming our World: the 2030 Agenda for Sustainable Development."<sup>60</sup> The 2030 Agenda includes addressing global challenges such as poverty, inequality, climate change and environmental degradation and targets related to clean water and good health and well-being. In light of environmental protection's contribution to sustainable development, the judiciary has a role to

---

<sup>57</sup> Murombo (n.13 above).

<sup>58</sup> DB Magraw & LD Hawke 'Sustainable development' in Bodansky et al, 2007.

<sup>59</sup> SDGs are a collection of 17 global goals set by the United Nations General Assembly in 2015 for the year 2030.

<sup>60</sup> United Nations Department of Economic and Social Affairs Sustainable Development, 2015, <https://sdgs.un.org/goals>.

translate provided rights and visions into enforceable and actionable measures. So, legal frameworks such as the Zimbabwean Constitution are essential tools for achieving envisioned sustainable development. They provide for rights that can contribute to a healthier planet and a better future for all. It becomes critical to ensure the effective implementation of such provisions as those extended by environmental rights.

The substantive nature of environmental protection is that whilst environmental legislation is the product of political legislatures, it responds to real problems. Environmental legislation itself is constantly being amended and integrated into the legal order. Environmental law is a product of the complexity of environmental problems and the need to adapt the legal order to respond to those problems. Faced with the scientific and socio-political complexity of environmental problems, law appears to be an answer. Thus, those who are keen to protect the environment must see environmental law and environmental rights in instrumental terms, thus, seeing an international treaty, legislation, or courts as a solution to environmental problems. Fisher (2017) notes how environmental legislation can give rise to a new field of legal practice, and that the maintenance of environmental quality requires the steady and legitimate application and expansion of the law.<sup>61</sup> So, in light of the above, the judiciary can play a crucial role in ensuring the development and implementation of legal frameworks for environmental protection and achieving sustainable development. The judiciary serves as the ultimate defender of the right to a healthy environment. Courts play a crucial role in interpreting and enforcing environmental laws. Landmark court decisions in various fields have shaped legal principles. By adjudicating cases related to environmental rights, the courts can ensure that environmental laws are effectively enforced.

---

<sup>61</sup> E Fisher, *Environmental Law: A Very Short Introduction*, Oxford University Press, 2017.

As ZELA puts it “Zimbabwe has sound laws and policies that can help address environmental issues related to climate change, environmental degradation, and pollution” but “there is need for a robust implementation of laws and policies.” It added: “There is need for effective participation by all relevant stakeholders in policy formulation, implementation, monitoring, and evaluation.”<sup>62</sup> The judiciary has the power to interpret the various legal frameworks that exist for environmental protection. It has the role of interpreting laws to make them clear, practicable, and enforceable. Through their judgments, the judiciary can promote sustainable development by balancing environmental protection with economic and social development needs. This aligns with Zimbabwe’s commitment to the Sustainable Development Goals (SDGs) and it’s National Development Strategy.

This chapter illuminated the sources of environmental law in Zimbabwe and their co-relationship with environmental protection and sustainable development issues. Zimbabwe has modernised its environmental laws, but challenges remain. Economic pressures, political instability, weak interpretation of rights, and enforcement mechanisms have hindered the effectiveness of these efforts. So, the next chapter extends the discussion in this chapter by giving the conceptual framework of the analysis of Zimbabwe's judiciary interpretation and expansion of environmental rights. This provides clear lens through which the topic is examined and the relationship between selected variables. The chapter guides the selected variables and the analytical approaches for examining the judiciary’s decisions, legal reasoning, and the implications for sustainable development and environmental protection.

---

<sup>62</sup> See F Matasva, Zimbabwe: The Zimbabwe Environmental Law Association calls on government to set up environmental courts and tribunals to speed up environmental justice, Business and Human Rights Resources Centre, 2022.