

CHAPTER 5: CONCLUSION

This study examined how the judiciary in Zimbabwe has expanded environmental rights as provided for in the Constitution. While the Constitution includes environmental rights in the Bill of Rights and is in line with international and regional trends, the problem remains that there is no solid environmental jurisprudence that can assist in the interpretation, application, implementation and enforcement of existing laws. The judiciary plays a critical role in interpreting and enforcing environmental rights. The role of the courts is especially important in the context of the protection of the environment, and giving effect to the principle of sustainable development.

This research is based on the problem of a lack of clear, comprehensive and concise understanding of the scope, content and extent of environmental rights as enshrined in the Constitution and supposedly given effect by subsidiary legislation such as the EMA. A corollary of the lack of a clear knowledge base on environmental rights is that environmental problems remain unaddressed. The main problems include environmental degradation, water and air pollution, deforestation, poor waste management and resource exploitation, wetland degradation and others. With a clear understanding of the scope, nature and meaning of environmental rights, problems, including even the socio-economic meltdown characterising the nation can be tackled, confronted or addressed. Sustainable development integrates environmental, social and economic in advancing development. Zimbabwe's socio-economic meltdown requires a holistic approach that integrates environmental rights, and sustainable practices that ensure the environment and resources are protected for the benefit of present and future generations. By prioritising environmental well-being, Zimbabwe can build resilience, improve livelihoods, and create a path toward socio-economic recovery.

Consequently, the constitutional recognition may not translate into Zimbabweans fully enjoying and realising their environmental rights as envisaged by the Constitution. This is because there is no guidance to the judiciary, the executive, the legislature and other critically important organs of state and government on how to apply, use and make reliance on current environmental rights provisions for purposes of enhancing environmental protection. In light of this, the judiciary is essential in managing this intersection because it is both the protector of the Constitution and the arbiter of justice. This study examined how Zimbabwean courts reconcile the frequently conflicting objectives of environmental stewardship and development by critically analysing the discourse within the country's judicial decisions.

This research highlighted that discourse is vital for understanding the judiciary's effectiveness in safeguarding the environment. It can provide insights into inherent challenges within environmental rights discourse and potential areas for legal reform and capacity building within the judicial system. Conducting a CDA of Zimbabwe's judiciary in balancing sustainable development and environmental protection involves examining how legal texts, judicial decisions, and the broader legal discourse contribute to the understanding and implementation of these two often competing interests.

Of importance to note in this research is the indivisibility of rights. It was emphasised that environmental rights are interconnected to all other fundamental human rights. Recognising this interdependence promotes a holistic approach to human well-being and socio-economic development. This outcome must be sought in multiple ways, including via the principles guiding environmental decision-making and how authorities decide on priorities in judicial adjudication. Thus, there may be situations in which a choice made or action done in accordance with a law that applies to everyone violates someone's right to the environment while still being reasonable and justified.

The first chapter introduced the study, providing the background which contextualises this research. It spelt out the aims of the research that delineated the thesis statement, rationale, theoretical framework, methodology, and chapter outline.

Chapter 2 illuminated the historical context and legal frameworks that form the basis of judicial decisions for sustainable development and environmental protection in Zimbabwe. Zimbabwe's natural resources have historically been the backbone of its economy. However, the exploitation of these resources has often come at the expense of environmental health and sustainability. The 2013 Constitution of Zimbabwe marked a significant shift by incorporating environmental rights, thus mandating the state and all institutions to respect, protect, promote, and fulfil these rights.

Chapter 3 integrated the variables and theoretical perspectives underpinning this research to allow for a comprehensive analysis of how the judiciary interprets and applies laws related to sustainable development and environmental protection. The functional and compulsive nature of legally balancing environmental protection and ensuring an environment that caters for health and well-being remains partially veiled. Environmental principles are omnipresent but often nebulous. Their content remains abstract until clearly unpacked and contextualised within specific legal cultures which makes the judiciary role indispensable in this endeavour. The interpretation and expansion of environmental law principles by the judiciary are pivotal in shaping legal frameworks that safeguard the planet. Failure to interpret and expand principles of environmental law and environmental rights can represent a breach in the legal fabric. The chapter also comprehensively delineated the judiciary's exercise of functions, especially in light of environmental rights. The judiciary's roles, authority and guiding principles as provided by the Constitution were all captured. The chapter generally unpacked environmental rights,

sustainable development and why critical discourse is critical in exploring these issues and how the judiciary balances inherent trade-offs.

Chapter 4 critically engaged with selected cases and explored how the judiciary has contributed to environmental protection and sustainable development discourse through its judgments. It mainly looked at how the judges have dealt with balancing well-established legal rules and principles with the evolving environmental rights as provided for by the Constitution. The discussion highlighted how the courts have easily embraced the relaxing of the *locus standi* because it is a well-established principle in law. From the judgements, the chapter sheds light on how law can evolve, but as long as it remains committed to stability and the rule of law, constitutionality and justice are guaranteed. The analysis in this chapter illuminated the importance of developing a body of environmental case law and legal practice grounded in robust legal reasoning and a commitment to ideals of environmental protection and sustainable development.

The norm is that environmental cases rarely reach the courts, and judges have limited opportunities to dissect environmental protection laws in relation to the right to a healthy environment. However, understanding the judiciary's role in advancing environmental protection remains crucial. The judiciary can play a pivotal role in interpreting and enforcing environmental laws, ensuring they align with constitutional provisions. By doing so, they contribute to safeguarding Zimbabwe's natural resource base and promoting sustainable development¹⁷⁰

Environmental problems do not fit easily into these existing legal frameworks. There are many interconnected parties. Around an environmental statute develops a complex body of law and practice

¹⁷⁰ Soyapi (n.17 above).

concerning how to apply it legitimately. While environmental legislation can disrupt the legal order by creating new legal obligations, the legal order develops to adapt to such disruption and to create a new stable legal equilibrium. Many contemporary environmental laws, like other areas of regulation, regulate activities before they become serious problems. This is in contrast to other areas of law that are concerned with the legal implications of past behaviour. As environmental problems are dynamic, laws in relation to them often need to be revised.

In the context of Zimbabwe, it is evident that courts have not had the chance to do such balancing, as proven by the lack of significant jurisprudence on environmental rights. What is clear, though, is that socio-economic development has for the most part been occurring at the expense of the environment. Much of this has been tied to various neo-colonial-type deals, mostly involving China.

All arms of the state must play their part to ensure that environmental rights become a reality. The legislative, executive, judicial, and other state organs are all required to abide by the rule of law and abide by the environmental rights guaranteed by the Constitution and the EMA. There has been a rise in lawsuits opposing governmental action and inaction that have an adverse effect on the environment and the alarming rates of non-compliance with environmental laws that affect various communities across the nation. Most of the elite leaders are behind mining and private property deals which greatly compromises the judiciary in its execution of judiciary duties. This explains why private property judgments in wetland cases are brief and hesitant.

Despite a comprehensive legal framework, Zimbabwe still faces challenges in implementing environmental protection measures. These challenges include inadequate funding, limited public awareness, and weak enforcement mechanisms. To address these challenges,

Zimbabwe could consider increasing funding for environmental protection measures, raising public awareness through education and outreach programs, and strengthening enforcement mechanisms.

The Constitution is the ultimate law of the land. Any legislation that conflicts with Zimbabwe's Constitution is invalid to the degree of the discrepancy. Therefore, every law must be interpreted so that, to the greatest extent feasible, it complies with the Constitution. Environmental rights and sustainable development are essential concepts that are critical to the health and well-being of individuals and communities. In interpreting these constitutional rights, the courts must also take into account global best practices. Zimbabwe is party to several international treaties for the protection of the environment, as such constitutional rights must be interpreted and applied in conformity with these conventions and treaties. Measures should be taken to establish legal, economic, and social frameworks that unequivocally require the government, civic organisations, and private individuals to act as knowledgeable and accountable guardians of the environment.

Just as environmental rights have expanded to address environmental problems, so too needs legal imagination. Section 73 shows that environmental rights involve the deliberate stretching of legal systems to respond to the protection of the environment and the complexity of fundamental rights while ensuring the stability of legal systems. The creation and operation of environmental rights need the judiciary to reflect upon and develop legal concepts, rules, and principles that embrace all aspects of environmental rights. Legal imagination is needed to develop law to respond to a world of multiple interconnected parties, rights, scientific uncertainty, and socio-politico-economic interests.

It is contended that specialised courts would be able to develop superior procedural norms and develop a better quality of jurisprudence through the developed expertise of judges who have greater exposure. They could develop uniformity, consistency and predictability in their decision-making that would enhance public confidence and help develop a rich body of jurisprudence.¹⁷¹ This would save time and cost, making litigation easier and quicker. Jurisdictions with specialised environmental courts seem to be doing well in terms of environmental justice, and it is hoped that the establishment of such courts in Zimbabwe could strengthen the provision of environmental justice in Zimbabwe too.

As highlighted before, mining issues and cases deserve a comprehensive, deeper analysis. It illuminates the politics, ideologies and power dynamics which cannot just be addressed by focusing on discourse.

The environmental clause calls for higher standards and accountability from the legislature and the executive to public interest in the environment. As a result, environmental protection and the legacy of the environment must be safeguarded under a new national drive. Having the protection of the environment in mind guides the judiciary in the interpretation of laws so that they reflect the spirit of a nation which has become conscious of the need to protect its environmental heritage. Courts have the task of balancing the competing interests of development and environmental protection.

The efficacy of environmental rights often depends on broader political variables, including the presence or absence of the rule of law. In summary, while Zimbabwe faces environmental challenges, the judiciary's role in adjudicating environmental protection cases remains essential. Scholars and practitioners should continue to explore this

¹⁷¹ Ndlovu (n. 118 above).

area to enhance our understanding of how the courts navigate environmental rights within the country's governance context.