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## **A Legal Analysis of the Human Rights Violations in the Zambian Mining Sector**

**By**

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Submitted in partial fulfillment of the requirements for the degree of

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I love my family so much. This dissertation is dedicated to them.

## ABSTRACT

This dissertation is a legal analysis of the violations of human rights in the Zambian mining sector. The study provides a brief background to the mining sector in Zambia, the facts of several past and ongoing cases related to the human rights violations in the Zambia mining sector, summaries of domestic, regional and international human rights law applicable to the Zambian mining sector and then applies the legal framework to the facts of past of and ongoing cases relating to violations of human rights in the Zambian mining sector.

The study thus aims to discuss the effectiveness of the Zambian legal framework in addressing human rights violations in the mining sector. In doing so, it aims at establishing whether the Zambian legal framework, in practice, is reducing and mitigating the negative impacts of the mining sector on human. The study will inform the government, regulatory institutions, mining companies, and grievance mechanisms of what is expected of them under the existing regulatory framework, including regional and international standards and also empower affected communities on when and how to seek a remedy .

By employing a desktop-based research methodology, the study analyses reported incidences of human rights violations in the mining sector in the light of existing legal framework. It also analyse issues around the enforcement of existing legal frameworks and some gaps and inconsistencies between Zambia domestic legal frameworks and regional and international instruments to which Zambia is a party.

The reveals that there are persistent incidences and cases of violations of human rights in the mining sector which include, air, water, and soil pollution, land degradation, and the displacement of rural communities without consultation and fair compensation. Besides, mining workers are subjected to poor and unsafe working conditions and standard and the use of excessive force by both public and private security forces. The study also reveals that Zambia has laws and regulations aimed at minimizing the negative impacts of mining operations on human rights and ratifying several international and regional human rights instruments.

While the law provides protections of human rights, there is a chronic lack of enforcement of the law and underfunding of most of the major regulatory bodies. The majority of victims are poor and unable to access justice without the provision of meaningful legal aid. In addition, there are fairly large gaps between the existing law regional and international law. The Zambian legal framework lacks concrete requirements for consultations with and participation of local communities. Therefore, the Zambian legal framework is ineffective in addressing human rights violation in the mining sector.

## LIST OF ACRONYMS

ACHPR	African Charter on Human and People’s Rights
CEDEW	Convention on the Elimination of All forms of Discrimination Against Women
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EMA	Environmental Management Act
EMP	Environmental Management Plan
ESIA	Environmental and Social Impact Assessment
FQM	First Quantum Minerals
GRZ	Government of the Republic of Zambia
GDP	Gross Domestic Product
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic and Cultural Rights
ILO	International Labour Organisation
KCM	Konkola Copper Mines
KLM	Kalumbila Minerals Limited
MCM	Mopani Copper Mines
MMDA	Mines and Minerals Development Act
MMMMD	Ministry of Mines and Mineral Development
NFC	China Nonferrous Metal Industry
WGEI	Working Group on Extractive Industries Environment and Human Rights
ZCCM	Zambia Consolidated Copper Mines
ZCCM-IH	Zambia Consolidated Copper Mines Investment Holding
ZEMA	Zambia Environmental Management Agency

## KEYWORDS

Mining sector, extractive Industries, Human rights, right to property, displacement, consultation, public participation, satisfaction, environmental damage, Zambia

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## CHAPTER 1: INTRODUCTION

### 1.1. Background to the study

Continued human rights violations in the extractive industries sector have negatively impacted communities residing in resource-rich areas in Africa.<sup>1</sup> The extractive industries sector is, arguably, a leading violator of human rights in Africa.<sup>2</sup> These violations include forced relocation and evictions of local communities, loss of livelihoods, pollution of the environment and the consequent health effects on the local community, destruction of the environment and ecosystems, poor working conditions,<sup>3</sup> and excessive use of force by state and private security.<sup>4</sup>

The consistent allegations<sup>5</sup> and reports<sup>6</sup> of serious human rights violations in the extractive industries sector in Africa contributed to the African Commission on Human and Peoples' rights (ACHPR)'s decision to establish the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa (the WGEI).<sup>7</sup> The WGEI was established to address the allegations of violations of human rights committed in the extractive industries sector.<sup>8</sup> Its first research and information gathering mission on possible violations of human rights in the extractive industries sector in Africa,

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<sup>1</sup> The African Commission on Human & Peoples Right (ACHPR), *Statement of the Institute for Human Rights and Development in Africa (IHRDA) on Extractive Industries and Human Rights in Africa* (51<sup>st</sup> Ordinary Session of the ACHPR, 2012).

<sup>2</sup> Commissioner Solomon Ayele Dersso, *The Power of Business and the Human Rights Protection Vacuum* (Speech Delivered During the Inaugural General Assembly of African Coalition for Corporate Responsibility, University of Pretoria, 2016) available at [http://www.achpr.org/news/2016/07/d226\(last](http://www.achpr.org/news/2016/07/d226(last) accessed on 30 April 2018)

<sup>3</sup> *Id.*

<sup>4</sup> Communication No. 155/96: *Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights (CESR) v Nigeria* para 54

<sup>5</sup> *Id.*

<sup>6</sup> See for example, Resolution ACHPR/Res.148(XLVI)09 on the Establishment of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa (WGEI) (Resolution on Establishing WGEI) available at [www.achpr.org/sessions/46th/resolutions/148\(last](http://www.achpr.org/sessions/46th/resolutions/148(last) accessed on 28 July 2018 )

<sup>7</sup> ACHPR, 'Report of the WGEI (Presented on the Occasion of the 25<sup>th</sup> Anniversary of the as Part of the 52<sup>nd</sup> Ordinary Session of the Commission, Banjul, 9-12 October 2012) available at [www.achpr.org/sessions/52nd/intersession-activity-reports/extractive-industries/](http://www.achpr.org/sessions/52nd/intersession-activity-reports/extractive-industries/) (last accessed 26 July 2018) para 8.

<sup>8</sup> *Id* para 2.

was undertaken in Zambia in July 2014.<sup>9</sup> The WGEI noted, at the end of the mission, that while much has been done in relation to the extractive industries, environment and human rights in Zambia, much remains to be done.<sup>10</sup> It further noted that severe challenges remain towards the realization of the human and peoples' rights in Zambia as guaranteed under the African Charter.<sup>11</sup>

The Zambian economy is heavily dependent on the mining sector, in particular copper mining, which has been the backbone of the economy of for over 70 years.<sup>12</sup> Copper mining has, in recent years, provided about 70% export revenue and 12 % of the gross domestic product (GDP)<sup>13</sup> and 30% of government revenues,<sup>14</sup> and employs about 8% of total formal employment.<sup>15</sup> However, the over 70 years of mining operations, no formal mine closures and a lack of concurrent rehabilitation of mining sites has caused a massive environmental damage .<sup>16</sup> Commonly reported perils of mining projects and operations in Zambia include: environmental damage through contamination of land, air and water; health hazards; forced relocations; alterations of social structures;<sup>17</sup> poor and unsafe working conditions and standard<sup>18</sup> and the use of excessive force by both public and private security forces.<sup>19</sup>

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<sup>9</sup> Press Statement on the Research and Information Mission of the ACHPR WGEI in the Republic of Zambia (Lusaka, 20 January 2014) available at <http://www.achpr.org/press/2014/01/d187/> (last accessed 20 July 2018)

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> The World Bank, *Republic of Zambia Systematic Country Diagnostic* (Report No. 124032-ZM, 2018) para 12.

<sup>13</sup> *Id.*

<sup>14</sup> The Zambia Human Rights Commission *National Baseline Assessment on Business & Human Rights*(2016) (The Human Right Commission 2016 ) available at [www.hrc.org.zm/index.php/publications/general-publications/file/156-2016-zambia-national-baseline-assessment-on-bussiness-and-human-rights](http://www.hrc.org.zm/index.php/publications/general-publications/file/156-2016-zambia-national-baseline-assessment-on-bussiness-and-human-rights) ( accessed 20 July 2018) 11.

<sup>15</sup> The World Bank ( *supra* note 12) para 12.

<sup>16</sup> *Id.* para 225.

<sup>17</sup> *Id.*

<sup>18</sup> The Human Rights Watch Report, “‘You will be Fired if Refuse’: Labour Abuse in Zambia’s Chines State-owned Copper Mines” ( 2011) available at <https://www.hrw.org/sites/default/files/reports/zambia1111ForWebUpload.pdf> ( last accessed 20 July 2018) Human Right Watch Report 2011) 1

<sup>19</sup> Brian Chama “Economic Development at the Cost of Human Rights: China Nonferrous Metal Industry in Zambia” (Human Rights Brief 17, no. 2, 2010) available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1113&context=hrbrief> ( last accessed 30 July 2018) 3.

Certainly the country has difficulties maintaining a proper balance between the positive and negative impacts of mining.<sup>20</sup>

## **1.2. Aims and objectives of the study**

### **1.2.1. Research aims**

In light of reported incidences and risks associated with mining, the research aim of this dissertation is to discuss the effectiveness of the Zambian legal framework in addressing human rights violations in the mining sector. In doing so, it aims at establishing whether the Zambian legal framework is reducing and mitigating the negative impacts of the mining sector on human rights.

### **1.2.2 Research objectives**

- To give an account of the situation of human rights violations in the mining sector in Zambia. This will be achieved using specific reported incidences and human risks in the mining sector.
- To highlight the relevant domestic regulatory and international provisions and standards relating to human rights in the extractive industries sector.
- To analyse how the current human rights provision applies in practice.

## **1.3 Research questions**

### **1.3.1. Primary research question**

Is the Zambian legal framework effective in addressing human rights violation in the mining sector?

### **1.3.2. Secondary research questions**

- What is the situation regarding human rights violations in the extractive sector in Zambia?
- What are the relevant domestic regulatory and international provisions and standards relating to HR?
- How do the current human rights provisions apply in practice?

## **1.4. Research methodology**

### **1.4.1. Methodology**

By employing a desktop-based research methodology, this study will:

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<sup>20</sup> World Bank ( *supra* note 12) para 227.

- Analyse reported incidences of human rights violations in the mining sector in the light of existing legal framework. There already exists numerous reports and even cases taken to court or settled that will provide background information without the need to conduct interviews.
- Analyse issues around the enforcement of existing legal frameworks.
- Identify the gaps, if any, in domestic legal frameworks, using regional and international instruments to which Zambia is a party.

#### **1.4.2.Parameters**

Due to the broad nature of human rights violations in the extractive industries and to the prescribed length of the dissertation, this study will be limited to in scope. It will not provide any theoretical foundation or discussion of the concepts of human rights. It will only deal with specific human rights violations using relevant domestic regulatory and international provisions and standards relevant to the mining sector in Zambia.

#### **1.4.3.Limitations**

Three main limitations are anticipated. First, the field of business and human rights is so broad that it is not possible to cover all of them in this dissertation. Only those frequently reported human rights violations will be discussed. Second, there has been very limited strategic litigation in this field. The various provisions in domestic legal framework have not been interpreted thereby creating a risk that the court may interpret the law differently from this study in the future. Third, due to political sensitivity of investigations of the mining sector in Zambia, the study will not benefit from primary data in the form of interviews.

#### **1.5.Relevance of the study <sup>21</sup>**

While the negative impact of mining, especially environmental damage, has attracted the attention of scholars, comparatively little attention has been afforded to violations of human rights in the extractive industries in Zambia. Much of the existing scholarly work, and investigative and official reports focus on the impacts of mining on the environment but not on how such impacts amount to the violation of human rights.<sup>22</sup>

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<sup>21</sup> A detailed review of available literature is not possible due to the prescribed length of the dissertation. However, some relevant literature is referred to in the sections in the introduction, background information and research problem.

<sup>22</sup> See for example, Joanna Lindahl "Environmental Impacts of Mining in Zambia: Towards Better Environmental Management and Sustainable Exploitation of Mineral Resources" (Geological Survey of Sweden

In 2011, Human Rights Watch produced a report which examined the labour practices of Chinese state-owned companies in Zambia.<sup>23</sup> However, this report is limited to Chinese-owned mining companies' labour related issues and does not deal with the majority of human rights violations consistently reported in the Zambian mining sector.

Other studies have focused on foreign investment and fiscal management and their impacts on the rights to a clean and safe environment or health. For example, Mulesa Venessa Lumina examined in detail the impact of financial outflows on the right to a healthy environment in the mining sector.<sup>24</sup> However, her study does not address other human rights violations frequently reported. Similarly, Chipasha Mulenga studied FDI in the Zambian mining sector and only the right to a clean, safe and healthy environment is discussed and how it may lead to a violation of the right to life.<sup>25</sup> Its scope on the human rights violations in the mining sector in Zambia is limited.

Further, the Zambian Human Rights Commission produced the National Baseline Assessment on Business and Human Rights (National Baseline) in 2016.<sup>26</sup> The National Baseline provides a detailed account of the protection of human rights in relation to business activities in Zambia. It also examines the measures the government of Zambia has taken to protect human rights from the adverse impact of business activities. However, the assessment was done on the basis of the United Nations Guiding

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2, 2014) available at <http://resource.sgu.se/produkter/sgurapp/s1422-rapport.pdf> (last accessed 16 July 2018); Karl Reis & Paul Russell "A Balancing Act: Zambian Environmental Management in a Financially Copper Industry" (Southern African Institute for Policy and Research Occasional Paper Series, 2017) available at <http://saipar.org/wp-content/uploads/2017/11/2017-01-Reis-and-Russell.pdf> (last accessed 20 July 2018); Patricia Chisanga, "Environmental Degradation in the Extractive Industries and other Industries in Africa" (Action Aid, 2013) available at [www.iap-association.org/getattachment/Conferences/Regional-Conferences/Conference-Documentation-Zambia/3-AIORC\\_Zambia\\_P5\\_Pamela\\_Chisanga.pdf.aspx](http://www.iap-association.org/getattachment/Conferences/Regional-Conferences/Conference-Documentation-Zambia/3-AIORC_Zambia_P5_Pamela_Chisanga.pdf.aspx) last accessed 19 July 2018; and Chalwe C. Mwansa "A Political Ecology of Copper Production and Environmental Degradation in Zambia" (Master's Theses, University of San Francisco, 2016) <<https://repository.usfca.edu/cgi/viewcontent.cgi?article=1312&context=thes>> accessed 26 July 2018

<sup>23</sup> Human Rights Watch 2011 (supra note 18)

<sup>24</sup> Mulesa V. Lumina "The Impact of Outflows on the Right to a Healthy Environment: The Case of the Mining Sector in Zambia" (unpublished Master of Laws Dissertation, University of Pretoria 2017).

<sup>25</sup> Chipasha Mulenga "Foreign Direct Investment in the Zambian Mining Sector: The Need for Environmental Protection and Human Rights" (LLD Dissertation, University of Pretoria 2017) available at [https://repository.up.ac.za/bitstream/handle/2263/64626/Mulenga\\_Foreign\\_2017.pdf?sequence=1&isAllowed=y](https://repository.up.ac.za/bitstream/handle/2263/64626/Mulenga_Foreign_2017.pdf?sequence=1&isAllowed=y) last accessed 20 July 2018.

<sup>26</sup> The Zambia Human Rights Commission 2016 (supra note 14).

Principles on Business and Human Rights.<sup>27</sup> Because the National Baseline focused on all types of business activities in Zambia, it only provides broad assessments. It only focuses on government's duties to protect human rights and not on how ongoing violations of human rights can be addressed using the existing legal framework

Other studies are too broad, do not deal with specific violations of human rights, and mostly only target the government. Others make general conclusions on the adequacy or inadequacy of legal frameworks without conducting a factually based legal analysis of the human rights violations in the extractive sector in Zambia. This study will fill this gap by analysing the violations of human rights in the mining sector using domestic regulatory and international and regional provisions and standards. The study will inform the government, regulatory institutions and mining companies of what is expected of them under the existing regulatory framework. It will also empower affected communities, their representatives and the judiciary of how the existing legal framework can be used to provide a remedy to the affected communities.

### **1.6. Chapter overview**

This study will have five chapters. Chapter one will be the introduction to the entire study. It will provide a brief overview, the background to the research problem, the research problem, lack of studies, research aims and objectives, research questions, research methodology, anticipated limitations and an outline of the structure of the dissertation.

Chapter two will provide the contextual background of the situation of human rights violations in the extractive sector in Zambia. It will provide a brief background to the mining sector and provide factual backgrounds statements of reported incidences and cases of violations of human rights in the mining sector.

Chapter three will provide a detailed outline of relevant provisions of the regulatory framework. It will also outline applicable regional and international human rights standards.

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<sup>27</sup> John Ruggie "Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework" (A/HRC/17/31, 2011).

Chapter four will apply the relevant regulatory framework in Chapter three to the factual background statements of reported cases or incidences in Chapter two.

Chapter five will provide conclusions and recommendations.

## CHAPTER 2: CONTEXTUAL BACKGROUND OF INCIDENTS IN THE ZAMBIAN MINING SECTOR

### 2.1. Introduction

This Chapter provides the contextual background to human rights violations in the extractive industry sector in Zambia. It begins by giving a brief history of the mining sector and then discusses the facts of several past and ongoing relevant cases.

### 2.2 The History of Mining in Zambia

In Zambia, large-scale mining commenced in the late 1920s and has since become the backbone of the economy.<sup>28</sup> In 1973, the Government of the Republic of Zambia (GRZ) gained control of the mines from private companies and created the state-owned enterprise, Zambia Consolidated Copper Mines (ZCCM).<sup>29</sup> During the 1970s and 1980s, the copper mining industry was the second-largest employer in the country and accounted for about 85% of foreign exchange earnings, 30% of government revenue, and 15% of the Gross Domestic Product (GDP).<sup>30</sup> Copper production rose to 750,000 tonnes per year in the early 1970s<sup>31</sup>. During GRZ's short-term control of the mines, the state substantially invested in the construction of new schools, hospitals, and roads, using surpluses from copper revenues.<sup>32</sup> However, in 1999, copper production fell below 300,000 tonnes per year,<sup>33</sup> and the industry eventually dwindled due to a lack of investment, overstaffing, inefficient and outdated technology, and falling copper prices.<sup>34</sup> During this period, the negative environmental impact caused by the mining sector worsened as ZCCM was unwilling to incur expenses related to pollution reduction<sup>35</sup>.

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<sup>28</sup> Tomas Frederiksen "Corporate Social Responsibility and Political Settlements in the Mining Sector in Ghana, Zambia and Peru" (Effective States and Inclusive Development Research Centre, The University of Manchester, Working Paper No 74,11, 2017) available at <http://dx.doi.org/10.2139/ssrn.2893134> (last accessed on 11 September 2018)

<sup>29</sup> The World Bank *Project Appraisal Document for the Zambia Copperbelt Environmental Project* (World Bank Report No. 25347-ZA, 2003)4.

<sup>30</sup>*Id.* 4.

<sup>31</sup> Komex International Ltd & ZCCM Investments Holdings Plc *Zambia - Copperbelt Environment Project : Environmental Impact Assessment Main Report* (Report No. E539 Vol 2, 2003) available at <http://documents.worldbank.org/curated/en/468161468764056541/Main-report> (last accessed on 23 August 2018) para 3.1.1.

<sup>32</sup> Joanna Lindahl "Environmental Impacts of Mining in Zambia: Towards Better Environmental Management and Sustainable Exploitation of Mineral Resources" (Geological Survey of Sweden 2, 2014) available at <http://resource.sgu.se/produkter/sgurapp/s1422-rapport.pdf> (last accessed on 16 July 2018) 6.

<sup>33</sup> Komex International Ltd (supra note 31) para 3.1.1

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

To restructure the dwindling economy, develop the private sector, and encourage investments, the GRZ started privatising all of ZCCM's assets in 1995, completing the process in March 2000. ZCCM transformed into an investment holding company, ZCCM-IH, which became a minority shareholder with a 10–20% share in the newly created mines.<sup>36</sup> During the privatization negotiations, private investors were unwilling to assume responsibilities for historical environmental liabilities.<sup>37</sup> Consequently, GRZ strategically decided to retain, through ZCCM-IH, responsibility for a wide variety of historical environmental liabilities resulting from mining activities.<sup>38</sup>

In 2000, the Mines and Mineral (Amendment) Act No 2 of 2000 introduced Section 9A, which provided statutory indemnity for environmental liabilities to mining companies that purchased ZCCM assets.<sup>39</sup> GRZ later assumed the past and future environmental and safety liabilities from ZCCM's operations of the mines before the sale.<sup>40</sup> In addition, GRZ became responsible for environmental and safety liabilities arising from the post-sale operations of the mines as long as the purchasers were in compliance with the applicable environmental management plan (EMP).<sup>41</sup> The GRZ granted stability periods, ranging from 15 – 20 years, during which changes made to the Zambian mining and environmental legislations would not apply to the new mine owners.<sup>42</sup> The GRZ would have to pay the cost of any lawsuit resulting from mine pollution unless the mining company violated the terms of the EMP that it negotiated with the GRZ.<sup>43</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> The World Bank *Implementation Completion and Results Report for the Zambia -Copperbelt Environmental Project* (Report No: ICR00001904, 2011) para 2.

<sup>38</sup> The World Bank *Zambian Mining and Environmental Remediation and Improvement Project* (Report No: PAD 1513, 2016) para 4.

<sup>39</sup> See section 9A of the Mines and Minerals Amendment Act(MMDA) No. 2 of 2000; see also National Assembly of Zambia *Report of The Committee on Land, Environment and Tourism on the Auditor General on Environmental Degradation Caused by Mining Activities for the Fourth Session of the Twelfth National Assembly Appointed on 25<sup>th</sup> October 2014* (December 2017) available at [http://www.parliament.gov.zm/sites/default/files/documents/committee\\_reports/Report%20-%20Auditor%20General%27s%20Report%20-%20Environmental%20degradation.pdf\(last](http://www.parliament.gov.zm/sites/default/files/documents/committee_reports/Report%20-%20Auditor%20General%27s%20Report%20-%20Environmental%20degradation.pdf(last) accessed on 16 September 2018) 7.

<sup>40</sup> MMDA of 2000, section 9A(2)(3)(a)(b); see also Komex International Ltd( *supra* note 31) para 5.4.3.2.

<sup>41</sup> MMDA of 2000, section 9A(3)(c).

<sup>42</sup> Komex International Ltd( *supra* note 31) para 4.2.1.

<sup>43</sup> *Id* para 4.3.6.

In 2008, the Mines and Mineral Act (1995) was repealed and replaced by the Mines and Mineral Development Act No. 7 of 2008, which cancelled all Development Agreements in force.<sup>44</sup> However, the effect of the statutory cancellation of the Development Agreement on the Environmental Liability Agreement is not yet settled. The Attorney General has opined that Development Agreements and Environmental Agreements are separate agreements and the Environmental Agreements remain unaffected by the Development Agreements' cancellation.<sup>45</sup> The Supreme Court of Zambia will likely settle the legal effects of the cancellation in the currently pending appeal case, *Mopani Copper Mines Plc and Attorney General*.<sup>46</sup>

### **2.3 Environmental Damage and Health Challenges in Mining Towns**

The long history of mining has left a legacy of environmental damage in mining towns. The absence of any formal mine closure and concurrent rehabilitation, despite 70 years of mining, has exacerbated the damage in Zambia.<sup>47</sup> ZCCM and ZCCM-IH were responsible for the environmental damage, but both were financially and technically ill-equipped to handle it.<sup>48</sup> Partly "due to lack of a detailed environmental and social baseline study for each mine site at the time of privatization, the 'old' (pre-privatization) and the 'new' (post-privatisation) environmental liabilities are now often inseparable",<sup>49</sup> making it so difficult to determine where responsibility for clean-up lies vests.<sup>50</sup>

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<sup>44</sup> MMDA of 2008, section 160(1).

<sup>45</sup> National Assembly of Zambia *Report of The Committee on Land, Environment and Tourism on the Auditor General's Report on Environmental Degradation Caused by Mining Activities for the Fourth Session of the Twelfth National Assembly Appointed on 25<sup>th</sup> October 2014* (December 2017 available at [http://www.parliament.gov.zm/sites/default/files/documents/committee\\_reports/Report%20-%20Auditor%20General%27s%20Report%20-%20Environmental%20degradation.pdf](http://www.parliament.gov.zm/sites/default/files/documents/committee_reports/Report%20-%20Auditor%20General%27s%20Report%20-%20Environmental%20degradation.pdf) (last accessed on 16 September 2018) 7.

<sup>46</sup> *Mopani Copper Mines Plc v Geoffrey Elliam Miti and Attorney General*, Appeal No. 154/2016 [2016/SCZ/8/177] Mopani's Heads of Arguments at 5.2.4.

<sup>47</sup> The World Bank (supra note 12) para 5.

<sup>48</sup> Id para 226.

<sup>49</sup> The World Bank (supra note 38) para 5.

<sup>50</sup> The World Bank (supra note 12) para 226.

The old mining town of Kabwe still has unacceptably high levels of lead in the soil,<sup>51</sup> which are higher than any other municipality in the world.<sup>52</sup> Tens of thousands of residents, including more than 3,000 children, are estimated to have been affected by these high lead levels, both from naturally occurring mineralization and impacts from smelting.<sup>53</sup> Lead is a silent killer, resulting in non-specific clinical conditions, including abnormal pains, neurological symptoms, seizures, anemia, and headaches.<sup>54</sup> In several Copperbelt municipalities, copper smelters have caused emissions of sulphur dioxide (SO<sub>2</sub>) into the atmosphere, resulting in acid rains, soil erosion, crop damage, and air, water, and soil pollution.<sup>55</sup> Most of the Copperbelt has a concentration of copper in surface soil that is 50 times higher than in subsurface samples<sup>56</sup> while the air's SO<sub>2</sub> concentration ranges between 500 and 1000 ug/m, well exceeding the Zambian guideline of 50 ug/m<sup>3</sup>.<sup>57</sup> The Kafue river has shown highly elevated concentrations (<0.45 ug/m<sup>3</sup>) of dissolved copper and cobalt within the mining areas. Cassava roots and leaves and sweet potatoes grown in contaminated areas of the Copperbelt contain elevated concentrations<sup>58</sup> while backyard gardens are affected by necrosis due to the accumulation of heavy metals in the soil and SO<sub>2</sub> on the plant leaves.<sup>59</sup>

#### **2.4 Other Human Rights Risks and Impact of Zambian Mining**

In addition to pollution of air, water, soil and land degradation in old mining towns,<sup>60</sup> newly opened mines in the North-Western Province are causing “environmental, social and economic changes that have negatively affected local communities”.<sup>61</sup> Local communities have been displaced without prior

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<sup>51</sup> Zambia Ministry of Mines & Mineral Development *Environmental and Social Management Framework: Zambia Mining Environmental Remediation and Improvement Project*(2016) available at <http://documents.worldbank.org/curated/en/813951469077929423/pdf/SFG2338-EA-P154683-Box396279B-PUBLIC-disclosed-7-20-16.pdf> (last accessed on 23 August 2018) para 3.9.

<sup>52</sup> The World Bank( *supra* note 12)para 226.

<sup>53</sup> Zambia Ministry of Mines & Mineral Development ( *supra* note 51)para 3.9.

<sup>54</sup> The World Bank ( *supra* note 38) para 13.

<sup>55</sup> *Id* para 10.

<sup>56</sup> Elisha Ncube, Clement Banda & Jhonnah Mundike “Air Pollution on the Copperbelt Province of Zambia: Effects of Sulphur Dioxide on Vegetation and Humans” (Nat Env Sci 3(1, 2012)) available at [https://www.researchgate.net/publication/253650701\\_Air\\_Pollution\\_on\\_the\\_Copperbelt\\_Province\\_of\\_Zambia\\_Effects\\_of\\_Sulphur\\_Dioxide\\_on\\_Vegetation\\_and\\_Humans](https://www.researchgate.net/publication/253650701_Air_Pollution_on_the_Copperbelt_Province_of_Zambia_Effects_of_Sulphur_Dioxide_on_Vegetation_and_Humans) (last accessed on 25 September 2018) 37.

<sup>57</sup> Lindahl ( *supra* note 32) 8.

<sup>58</sup> *Id* 10.

<sup>59</sup> The World Bank ( *supra* note 38) para 10

<sup>60</sup> National Assembly of Zambia *Report of The Committee on Legal Affairs, Governance, Human Rights, Gender Matters and Child Affairs for the First Session of the Twelfth National Assembly Appointed on Thursday 6<sup>th</sup> October 2016* ( June 2017) 5.

<sup>61</sup> *Id* 6.

consultations or adequate compensation, often to areas far away from schools, hospitals, and other public services. In some cases, subsistence farmers have been resettled in urban areas where it is practically impossible to carry out farming activities.<sup>62</sup> Mining has also resulted in numerous negative labour related consequences,<sup>63</sup> including unsafe working conditions and standards<sup>64</sup> and the use of excessive force by both public and private security forces.<sup>65</sup>

## 2.5 Specific Incidences and the Human Risks Associated with Mining in Zambia

### 2.5.1 Konkola Copper Mines Plc vs James Nyasulu and 2000 Others

*Konkola Copper Mines Plc vs James Nyasulu and 2000 Others* concerns the pollution of the water source of a community in the Copperbelt Province's Chingola District.<sup>66</sup> On November 6, 2000, Konkola Copper Mines (KCM)'s tailings pipeline burst, causing the tailings to enter the Chingola and Mushima streams. Both of the streams lead to the Kafue River.<sup>67</sup> The community, which draws its drinking water from the river, consumed the polluted water and consequently suffered from various illnesses with symptoms that included vomiting and diarrhea.<sup>68</sup> The effluent discharged was highly acidic with a PH level of 2.8, whereas the licence permitted effluent discharges with PH levels between 6 and 9. The high acidity of effluent damaged the river and its surrounding infrastructure, causing it to become unsuitable for human or agricultural use.<sup>69</sup> Konkola did not add lime to neutralise the acidic effluent due to scarcity.<sup>70</sup> The pollution also forced the local utility companies to shut off the water supply for ten days.<sup>71</sup> In 2007, 2,001 community members (Plaintiffs) commenced an action in the High Court of Zambia against KCM, the Environmental Council of Zambia, and Chingola Municipal.<sup>72</sup>

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<sup>62</sup>The Zambian Human Rights Commission *2010 Annual State of Human Rights in Zambia: Human Rights and the Environment* (2010) para 3.

<sup>63</sup> *Id.*

<sup>64</sup> The Human Rights Watch Report, "‘You will be Fired if Refuse’: Labour Abuse in Zambia’s Chinese State-owned Copper Mines" (2011) available at <https://www.hrw.org/sites/default/files/reports/zambia1111ForWebUpload.pdf> (last accessed on 20 July 2018) .

<sup>65</sup> Chama(supra 19) 3.

<sup>66</sup> *Konkola Copper Mines Plc v James Nyasulu and 2000 Others* (Appeal No. 1/2012) Unreported J2.

<sup>67</sup> *Id* J2-J3.

<sup>68</sup> *Id* J3, J12.

<sup>69</sup> *Id* J11.

<sup>70</sup> *Id* J12; *James Nyasulu and 2000 Others v Konkola Copper Mines Plc and Others* (2007/HP/1286) Unreported J19-J20.

<sup>71</sup> *Konkola* (supra note 66) J12.

<sup>72</sup> *James Nyasulu and 2000 Others v Konkola Copper Mines Plc and Others* (2007/HP/1286) Unreported J2.

### **2.5.2 Lungowe & Others v Vendata Resources Plc and Konkola Copper Mines Plc**

This is another case against Konkola Copper Mines (KCM), together with its holding company, Vedanta Resources Plc.<sup>73</sup> The plaintiffs, including some of those who were unable to get relief in the *Nyasulu* case), similarly allege that they have suffered personal injuries, property damages, and the losses of income, amenities, and the enjoyment of land. They argue that the release of the toxic effluent, KCM, since 2005 caused environmental damages, including the large discharge that was litigated in the *Nyasulu* case.<sup>74</sup> The polluted water has been described as the applicants “primary source of clean water for drinking, bathing, cooking, cleaning and other domestic and recreational purposes. It is said that the waterways irrigate crops and sustain livestock are a source of fresh fish and that, in consequence, the waterways are ‘of critical importance to [the claimants’] livelihoods and their physical, economic and social wellbeing.”<sup>75</sup> The matter is currently pending before the Supreme Court in United Kingdom where KCM and Vandata are challenging the Court of Appeal’s decision on a jurisdictional issue.<sup>76</sup>

### **2.5.3 Mithi v Mopani Cooper Mines Plc and the Attorney General**

Another currently pending case is that of Beatrice Sala Mithi who died after being exposed to toxic fumes emitted by Mopani Copper Mines (MCM).<sup>77</sup> On December 31, 2013, Ms. Mithi attended a gathering at a local church, where bluish fumes filled the building and caused people to cough and have itchy skin.<sup>78</sup> Ms. Mithi collapsed and was pronounced dead at the hospital.<sup>79</sup> Her husband sued for negligence. The ZEMA employee who testified at trial stated that Mopani was not compliant with the statutory limits in particular, its SO<sub>2</sub> emissions were 70 times above the required limit.<sup>80</sup>

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<sup>73</sup> *Dominic Liswaniso Lungowe & Others v Vendata Resources Plc and Konkola Copper Mines Plc* [2017] EWCA Civ 1528.

<sup>74</sup> *Dominic Liswaniso Lungowe & Others v Vendata Resources Plc and Konkola Copper Mines Plc* [2016] EWHC 975 (TCC) paras 1 & 28; see also *Dominic Liswaniso Lungowe*(*supra note 73*)para 1.

<sup>75</sup> *Dominic Liswaniso Lungowe*(*supra note 73*)para 15.

<sup>76</sup> Supreme Court of the United Kingdom “Permission to Appeal Results”(March & April 2018) available at <https://www.supremecourt.uk/docs/permission-to-appeal-2018-0304.pdf> (last accessed on 25 September 2018)

<sup>77</sup> *Mopani Copper Mines Plc v Geoffrey Elliam Miti and Attorney General*, Appeal No. 154/2016[2016/SCZ/8/177].

<sup>78</sup> *Geoffrey Elliam Miti Mithi v Mopani Cooper Mines Plc and the Attorney General* (2014/HB/028) Unreported J5.

<sup>79</sup> *Id* J3.

<sup>80</sup> *Id* J13.

#### **2.5.4 Kankoyo Township in the Mufulira, Copperbelt**

Related to the *Mithi* case, the greater community in Kankoyo Mufulira alleges that MCM's operations created a whole host of problems. While there is no ongoing court case to address this, there have been well-documented complaints relating to the mining operations.<sup>81</sup> In 2010, the Human Right Commission reported that "[a]reas such as Konkoyo in Mufulira have paints peeling off houses and very poor soil fertility as a result of acid rains".<sup>82</sup> Similarly, a 2014 Report on State of Houses in Kankoyo<sup>83</sup> found that the "constant blasting activities ha[ve] caused most of the houses especially the ones near the mine shaft to begin to settle"<sup>84</sup> and further that "sulphur dioxide when mixed with water forms sulphuric acid which corrodes houses, roofing sheets and other infrastructure in Kankoyo".<sup>85</sup> The Report concludes that "[t]he environmental conditions are also not conducive for habitation hence relocating the people would be the best solution to this disaster".<sup>86</sup> A Committee of the National Assembly in its 2017 Report expressed similar concerns, citing the same negative impacts.<sup>87</sup>

#### **2.5.5 Doris Chinsambwe and 65 others v NFC Africa Mining**

The plaintiffs, who are farmers along the Musakashi Stream in Kalulushi District, sued China Nonferrous Metal Industry (NFC) Africa Mining Plc to recover damages from pollution discharged from the defendant's tailings dam, which was not properly maintained.<sup>88</sup> Additionally, in one particular instance in 2013, the dams overflowed, damaging the plaintiffs' crops.<sup>89</sup> In addition, the water flooding in the area had extremely high levels of suspended solids and trace metals, which damaged the aquatic life and impacted the local community's health who relied on the stream for drinking

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<sup>81</sup> Stephen Chanda & Wilson Moono "The Effect of Mining on the Environment: A case Study of Kankoyo Township of Mufulira District of the Republic of Zambia" (International Symposium on Mining and Environment, October 2017); Centre for Trade Policy and Development, "Pollution in the Copperbelt Province of Zambia: Case Study of Kankoyo" (2012) available at <http://www.counter-balance.org/wp-content/uploads/2013/03/Kankoyo-case-study-CTPD-CB-2012.pdf> (last accessed on 17 September 2018).

<sup>82</sup> The Zambian Human Rights Commission (supra note 62)44.

<sup>83</sup> A report from Acting Permanent Secretary, Ministry of Mines, Energy and Water Development compiled by the Engineering Department of Mufulira Municipal Council on the current state of Housing Unites in Kankoyo, Mufulira (Report No. OVP/101/5/2, 2014).

<sup>84</sup> *Id* para 2.3.4.

<sup>85</sup> *Id*.

<sup>86</sup> *Id* para 2.5.

<sup>87</sup> National Assembly of Zambia *Report of The Committee on Legal Affairs*(supra note 60)30.

<sup>88</sup> *Doris Chinsambwe and 65 others v NFC Africa Mining* [2014] HK 374.

<sup>89</sup> *Id* J2-J3.

water.<sup>90</sup> The Ministry of Agriculture determined that the damaged crops were assessed as K900 million.<sup>91</sup>

### 2.5.6 Musele Community Displacements

Similarly, the mining operations of First Quantum Minerals Ltd (FQM Ltd) and its subsidiary, Kalumbila Minerals Ltd (KLM), in Musele has led to the displacement and resettlement of the local community. FQM received several mining exploration licences in 2011 that covered 950km.<sup>92</sup> In the same year, Senior Chief Musele signed an agreement with KLM for the surface rights to 518 km<sup>2</sup>, which represented more than half of Chiefdom.<sup>93</sup> The community claimed this was signed under duress.<sup>94</sup> Almost 1,000 families were displaced and relocated to small houses about 18 kilometres away.<sup>95</sup> Since most of the families relied on subsistence farming, their livelihood has been severely compromised as they now have to walk a kilometre to their newly designated fields<sup>96</sup> and have now lost access to the local forest's resources.<sup>97</sup> KLM also dammed the Chisolo and Musangezhi river, destroying fishing activities, which was their source of food and income. In addition, transportation and food costs rose because the community is no longer located near a main road.<sup>98</sup> Further, the members of the community were unaware of the agreement's terms that limited the amount of compensation they could receive.<sup>99</sup> The community felt the compensation presented was not calculated in a transparent manner.<sup>100</sup>

KLM fenced off the graveside, based on the compensation agreements, making it impossible for the community to continue paying respect to their deceased relatives as required by their culture.<sup>101</sup> The

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<sup>90</sup> *Id* J14.

<sup>91</sup> *Id* J3.

<sup>92</sup> Angel Mondoloka "Approaches to Supporting Local and Community Development: The Views from Zambia"(UNU-WIDER Working Paper 41, 2017) available at <https://www.wider.unu.edu/sites/default/files/wp2017-41.pdf> (last accessed on 19 September 2018) 11.

<sup>93</sup> *Id*.

<sup>94</sup> Mwiya Mwandawande "Environmental and Social Audit of the Musele Community" (2013) para 4.1.1.4.

<sup>95</sup> Magdalena Mis "Women pay the price for Zambia Mining Expansion" *Reuters* (15 Sept 2015) available at <https://www.reuters.com/article/us-zambia-mining-women-idUSKCNORF02D20150915> (last accessed on 22 June 2018).

<sup>96</sup> *Id*.

<sup>97</sup> *Id*.

<sup>98</sup> *Id*.

<sup>99</sup> *Id*.

<sup>100</sup> Mwandawande(supra note 94) para 4.1.1.4.

<sup>101</sup> National Assembly of Zambia *Report of The Committee on Legal Affairs* ( supra note 60)33- 34

water bore -hole provided for the resettled community have elevated levels of iron, which could be harmful to their health.<sup>102</sup>

## 2.6 Labour Issues

One of the biggest issues related to mining companies in Zambia are labour violations. In 2005, 52 individuals died from a factory explosion caused by poor safety standards.<sup>103</sup> In 2011, Human Rights Watch released a report condemning the health and safety conditions of the employees of China's state-owned mining companies operating in Zambia, particularly in the Copper Belt.<sup>104</sup> The common health and safety problems include falling rocks, poor ventilation which lead to long-term lung problems, and exposure to hazardous chemicals.<sup>105</sup> Similarly in July 2017, a Committee of the Zambia National Assembly reported that stakeholder "expressed concern that there were reports of poor working poor working conditions and safety standards for mines such as exposure to toxic chemicals and minerals. They also highlighted that in some cases, Zambian workers were not paid a proper living wage commensurate to the nature of their jobs and their input".<sup>106</sup>

Additionally, workers' wages are so low that miners are unable to afford basic expenses,<sup>107</sup> and miners are working an unlawful number of hours.<sup>108</sup> Between 2005 and 2011, there were several incidents of violence between protesting miners and mine management where people were killed.<sup>109</sup> Workers who complained were also threatened with termination.<sup>110</sup> In 2006 five employees of China Nonferrous Metal Industry (NFC) were shot during a protests related to misunderstanding on the interpretation of some items in the Collective Agreement.<sup>111</sup> Later in 2007 five miners at the Chambishi Mine were also shot and killed during a protest.<sup>112</sup> In 2008, mine workers rioted again to protest poor working conditions.<sup>113</sup> On 15<sup>th</sup> October 2010 the two management of the Chines- run

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<sup>102</sup> *Id* 30.

<sup>103</sup> Chama(supra 19) 4.

<sup>104</sup> The World Bank *Implementation Completion* (supra note 37) 1

<sup>105</sup> *Id*.

<sup>106</sup> National Assembly of Zambia *Report of The Committee on Legal Affairs*(supra note 60)27.

<sup>107</sup> The Human Rights Watch Report ( supra note 64 )24.

<sup>108</sup> *Id* 75-83.

<sup>109</sup> National Assembly of Zambia *Report of The Committee on Legal Affairs*(supra note 60)24-25.

<sup>110</sup> *Id*.

<sup>111</sup> *Albert Mwanaumo and 5 Others v NFC Africa Mining Plc and 2 Others* (2006/HK/385) [2011] ZMHC 1

<sup>112</sup> The World Bank *Zambian Mining*( supra note 38) 4.

<sup>113</sup> Chama( supra note 19)4.

Collum Coal Mine in Sinazeze reportedly shot and wounded thirteen mine workers who were protesting for higher pay.<sup>114</sup>

Many mining companies in Zambia employed workers on a temporary basis.<sup>115</sup> In June 2017, the number of mine workers employed by independent contractors was almost half of the workers that mining companies directly employ.<sup>116</sup> Most contractors engaged by mining companies have workers employed on short term contract, thereby preventing them from joining labour unions and participating in collective bargaining.<sup>117</sup> Such employees are not entitled benefits such as pensions and medical insurance and receive low wages.<sup>118</sup> The Zambian Human Rights Commission also noted that many Chinese-owned businesses reportedly prohibit their workers from organising into unions, striking, or collectively bargaining.<sup>119</sup>

## 2.7 Conclusion

The discussion above has illustrated persistent violation human rights by the extractive industries in Zambia. These violations include, air, water, and soil pollution, land degradation, and the displacement of rural communities without consultation and fair compensation. Mining workers are subjected to poor and unsafe working conditions and standard and the use of excessive force by both public and private security forces. The GRZ has been active with the main objective of generating revenue to the detriment of environmental, health, and public safety considerations.<sup>120</sup>

The following chapter will provide a summary of the domestic, regional and international human rights law applicable to the Zambian mining sector.

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<sup>114</sup> National Assembly of Zambia *Daily Parliamentary Debate for the Fifth Session of the Tenth Assembly* ( 20 October 2010) 2.

<sup>115</sup> The Human Rights Watch Report ( supra note 64 ) 45.

<sup>116</sup> National Assembly of Zambia *Report of The Committee on Legal Affairs*(supra note 60)27, 34 & 38.

<sup>117</sup> *Id* 21.

<sup>118</sup> Industrial Global Union “Zambian Union Petition Dangote on Violations of Workers’ Right” (July 2018) available at <http://www.industriall-union.org/zambian-unions-petition-dangote-on-violation-of-workers-rights> (last accessed 12 September 2018).

<sup>119</sup> The Zambia Human Rights Commission 2016 ( supra note 14) 11.

<sup>120</sup> See *Id*.

## CHAPTER 3: LEGAL FRAMEWORK

### 3.1. Introduction

In light of persistent air, water and soil pollution, land degradation, displacement of rural communities without consultation and fair compensation, poor and unsafe working conditions and standard, and the use of excessive force by both public and private security forces, this Chapter summarizes the relevant domestic, regional and international laws applicable to the mining sector in Zambia.

### 3.2. Domestic Law & Regulations

The Republic of Zambia has enacted numerous laws that apply to the mining sector in Zambia, and these laws protect individuals from incidences and human rights risks in the mining sector.

#### 3.2.1. Constitution of Zambia

The Constitution provides that the State (including local government) must work to ensure a “clean, safe and healthy environment”.<sup>121</sup> Most explicitly the Constitution states that a person has a duty to cooperate with the State to maintain and protect a clean, safe and healthy environment, as well as to ensure sustainable development and prevent an act that is harmful to the environment.<sup>122</sup>

Article 11(1) of the Constitution guarantees to every person the right to life,<sup>123</sup> and Article 12 specifically states that no one shall be intentionally deprived of one’s life unless for the execution of criminal conviction under the law of Zambia.<sup>124</sup>

Article 15 mandates that “[n]o person shall be subjected to torture, or to inhuman or degrading punishment or other like treatment”.<sup>125</sup>

The Constitution also protects the right to property and right not to be deprived of one’s property without compensation.<sup>126</sup> An Act of Parliament which authorizes a taking of land, interest in land or rights over land must provide for payment of adequate compensation,<sup>127</sup> except when it is for the

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<sup>121</sup> Constitution of Zambia (Amendment), Act 2 of 2016, arts. 43, 151(2)(f), 256 & 257., art. 112(h).

<sup>122</sup> Constitution of Zambia (Amendment), Act 2 of 2016, art. 256.

<sup>123</sup> Constitution of Zambia, Act 8 of 1996 art. 11(1)( The Bill of Rights is contained in the Constitution of 1996 as that part of the Constitution requires a referendum to be amended, something that has not yet happened. Thus, Zambia applies two constitutions concurrently.)

<sup>124</sup> Constitution of Zambia (1996) art. 12.

<sup>125</sup> *Id* art. 15.

<sup>126</sup> Constitution of Zambia, Act 8 of 1996, art. 11(d).

<sup>127</sup> *Id* art. 16(1).

prospecting for, or exploitation of, minerals belonging to the Republic; here only the interest of the respective parties must be considered.<sup>128</sup> The Constitution also provides that without consent, no one shall be subjected to unlawful entry or search on one's property.<sup>129</sup>

The Constitution protects the freedom of assembly and association, including freedom to belong to any trade union.<sup>130</sup>

A person who alleges that any of the rights above has been, is being or likely to be contravened in relation to that person may apply for redress to the high Court.<sup>131</sup>

### **3.2.3. Environmental Management Act**

Section 4 of the Environmental Management Act (EMA) protects the right to a clean, safe and healthy environment, which includes the "right of access to the various elements of the environment for recreational, educational, healthy, spiritual, cultural and economic purposes".<sup>132</sup> It provides a civil cause of action for violating this right.<sup>133</sup>

The EMA goes further in enforcing rights related to the mining sector as it explicitly ensures that international treaties on the environment and natural resources are effectuated, specifically emphasizing the Government's obligation to ratify and give effect to international agreement designed to protect the environment, and to delegate to the Agency the implementation of international agreement relating to the environment.<sup>134</sup>

The Act also authorizes the Zambian Environmental Management Agency (ZEMA) to monitor and enforce the environmental law,<sup>135</sup> and review any project that might have an impact on the environment.<sup>136</sup> To undertake development projects like mining, the developer should obtain written approval from ZEMA.<sup>137</sup> The Environmental Impact Regulations of 1997<sup>138</sup> that have been continued

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<sup>128</sup> *Id* art. 16(2)(o).

<sup>129</sup> *Id* art. 17(1).

<sup>130</sup> *Id* art. 21.

<sup>131</sup> *Id* art. 28.

<sup>132</sup> Environmental Management Act (EMA) of 2011, section 4.

<sup>133</sup> *Id* sections 4 & 110(1).

<sup>134</sup> *Id* section 84.

<sup>135</sup> *Id* section 9.

<sup>136</sup> EMA (Amendment) Act 15 of 2012, sections 9, 26, 43, 48, 52, 69, 101 & 102.

<sup>137</sup> EMA of 2011, section 29(1).

<sup>138</sup> Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations of 1997.

under EMA requires project developer to conduct and Environmental Impact Assessment (EIA) and submit it together with an Environmental Impact Statement (EIS) to ZEMA.<sup>139</sup> Prior to submitting the EIS, the project developer is required to hold consultation to obtain the views of the communities that will be affected by the project.<sup>140</sup> Before obtaining the opinions of the communities, the developer must publicize the intended project, including its effects and benefits, in the mass media<sup>141</sup> in a language understood by the community at regular intervals throughout the project implementation.<sup>142</sup> At the expiration of the fifteen days publicising period, the developer must hold meeting with affected communities to present information and their views.<sup>143</sup>

The content of the EIS should include social and economic impact of the project such as resettlement of affected people.<sup>144</sup> The EIS should also include socioeconomic and cultural considerations such as the effects on generation or reduction of employment in the area, social cohesion or disruption (resettlement) and local economic impacts.<sup>145</sup> In addition, it should include effects on land uses and land potential in the project area and surrounding areas.<sup>146</sup> There are criminal penalties for not complying with the environmental impact assessment requirements.<sup>147</sup>

Finally, the public has a right to be informed about and to participate in decisions related to the environment.<sup>148</sup>

### **3.2.4. Employment Act**

The Employment Act regulates the employment of persons. It requires for engagement of persons on contracts of service and enforcement of the contract, and protection of wages.<sup>149</sup> Where the employer terminates employment based on the conduct or performance of the employee, the employer should

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<sup>139</sup> *Id* Regulations 3, 7 & 9(4).

<sup>140</sup> *Id* Regulation 10.

<sup>141</sup> *Id* Regulation 2 (including within the category of “mass media” publicly exhibited posters, newspapers, radios, televisions or electronic media used for public communications).

<sup>142</sup> *Id* Regulation 10(a).

<sup>143</sup> *Id* Regulation 10(b)

<sup>144</sup> *Id* Regulation 11(h)

<sup>145</sup> *Id* Regulations 8(3), 11 & Third Schedule 2(i), (ii) & (v).

<sup>146</sup> *Id* Regulations 8(3), 11 & Third Schedule 4(i) & (ii).

<sup>147</sup> EMA of 2011, section 117.

<sup>148</sup> *Id* section 91.

<sup>149</sup> Employment Act of 1997, Preamble.

give the employee an opportunity to be heard.<sup>150</sup> The Employment Act was amended by Act 15 of 2015 which outlawed casualization<sup>151</sup> of jobs that are permanent in nature.<sup>152</sup>

### **3.2.5. Industrial and Labour Relations Act**

The Industrial and Labour Relations Act also provides for protection of trade unions, recognition and collective agreements.<sup>153</sup> It specifically provides for right to join a trade union and to perform union activities, and protection from dismissal, penalisation and victimization due to participation in trade union activities.<sup>154</sup>

### **3.2.6. Lands Act**

The Lands Act vests all land in Zambia in the President in trust for the people.<sup>155</sup> The Act recognizes the customary land holding and the continuation of it.<sup>156</sup> A person holding land under customary tenure may convert it into leaseholds with the permission of the local chief and the local authority in the area.<sup>157</sup> The President can alienate the land,<sup>158</sup> including for mining projects to qualifying individuals or mining companies. However, the President is not authorized to alienate customary land without consulting every person, whose interest might be affected by the alienation, including the chief and local authority in the area.<sup>159</sup> In addition, the President is not authorized to alienate customary land without considering the local customary law on land tenure.<sup>160</sup>

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<sup>150</sup> *Id* section 26A.

<sup>151</sup> Employment (Amendment) Act 15 of 2015, section 2 (defining “casualisation” as “employment of a person under a contract of service for work which is permanent in nature under terms and conditions of employment for a casual employee”).

<sup>152</sup> *Id* section 12A(2)(3).

<sup>153</sup> Industrial and Labour Relations Act of 1997, Preamble.

<sup>154</sup> *Id* section 5.

<sup>155</sup> Lands Act of 1995, section 3(1).

<sup>156</sup> *Id* at section 7.

<sup>157</sup> *Id* at section 8(1)(2); see also the Lands (Customary Tenure) (Conversion) Regulations, Statutory Instrument 89 of 1996, section 2.

<sup>158</sup> Lands Act of 1995, section 3.

<sup>159</sup> *Id* section 3(4)(b) &(c).

<sup>160</sup> *Id* section 3(4)(a).

The Guidelines for the Compensation and Resettlement of Internally Displaced Persons (IDPs) of 2013<sup>161</sup> and the National Resettlement Policy of 2015<sup>162</sup> guide the resettlements and compensation of development-induced displaced persons in Zambia. However, these Guidelines and the Resettlement Policy are not supported by any legislation and therefore unenforceable.

### **3.2.7. Land Acquisition Act**

The President may compulsorily acquire a property in the interest of the Republic,<sup>163</sup> but cannot do so without giving notice and adequate compensation to the affected person.<sup>164</sup> An adequate compensation shall be evaluated at the market value of the property at the time of notice,<sup>165</sup> and should meet justice.<sup>166</sup> Further, the acquisition of land must be for a public purpose only.<sup>167</sup>

### **3.2.8. Mines and Mineral Development Act**

The Mines and Minerals Development Act (MMDA) provides that safety, health and environmental protection are general principles in the development of minerals.<sup>168</sup> The Act allows individuals to sue for damages related to mining activities which harm the environment and holds strict liability against owners of mining licenses for such breaches.<sup>169</sup>

Moreover, “mineral resources shall be explored and developed in a manner that promotes and contributes to socio-economic development and in accordance with international conventions to which Zambia is a party”.<sup>170</sup>

In terms of livelihood, MMDA also provides for strict liability for owners of mining licenses whose activities cause “any negative impact on the livelihood”, “any disruption or damage to any production or agricultural system”, “any reduction in yields of the local community”, or “any damage to the

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<sup>161</sup> Office of the Vice President, Guidelines for the Compensation and Resettlement of Internally Displaced Persons (IDPs) (Lusaka 2013).

<sup>162</sup> Office of the Vice President, National Resettlement Policy (Lusaka 2015).

<sup>163</sup> Lands Acquisition Act of 1970, Chapter 189 of the Laws of Zambia, section 3.

<sup>164</sup> *Id* sections 5, 6 & 10.

<sup>165</sup> *Id* section 12; see also *Lt General Geojago Robert Chaswe Musengule v Attorney General* 2009 ZR 359.

<sup>166</sup> *Goswami and Another v Commissioner of Lands*: SCZ Judgment No. 3 of 2001

<sup>167</sup> See *Wise v Attorney General* 1991 ZMHC 12, where the Court held that compulsory acquisition of the two farms and subsequent leasing of them to a different company was not for a public purpose but undertaken with a clear profit motive.

<sup>168</sup> Mines and Minerals Development Act (MMDA) of 2015, section 4(c).

<sup>169</sup> *Id* section 87.

<sup>170</sup> *Id* section 4(b).

economy of an area or community”.<sup>171</sup>

For working conditions, MMDA authorizes suspension or closing of a mine due to “an unsafe working environment”,<sup>172</sup> and allows the Director of Mines Safety to issue a compliance order to prevent risks to works or the environment.<sup>173</sup>

Finally, MMDA also requires the holder of a mining license to obtain consent from the owner, legal occupier or authorized agent of the land unless the operation is conducted in an area beyond 180 meters from a residence, 45 meters from a field or crops, and 90 meters from a deep tank or a dam.<sup>174</sup> The owner or lawful occupier of any land within an area of an exploration license has the right to use and access water, to graze stock upon, or to cultivate the surface of the land, as long as such activity does not interfere with exploration or other operations to be carried on under the exploration license.<sup>175</sup> The holder of mining license is required to exercise the rights conferred by the license in a manner least injurious to the owner or occupier of the land.<sup>176</sup>

### **3.2.9. Occupational Health and Safety Act, No. 26 of 2010**

The Occupational Health and Safety Act provides for the health, safety and welfare of persons at work.<sup>177</sup> Employers have a duty to ensure that plant and systems of work are safe, to maintain a workplace under the employer’s control and in a condition that is safe and without any risk to the employees, and to provide all appropriate protective clothing or equipment for the employees.<sup>178</sup>

### **3.2.10. Water Resource Management Act, No 21 of 2011**

The Water Resources Management Act criminalises water pollution regardless of whether it was done intentionally or not and empowers the court to order compensation for any damage caused.<sup>179</sup>

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<sup>171</sup> *Id* section 87.

<sup>172</sup> *Id* section 36.

<sup>173</sup> *Id* section 75.

<sup>174</sup> *Id* section 52(b).

<sup>175</sup> *Id* section 54(1).

<sup>176</sup> *Id* section 53.

<sup>177</sup> Occupational Health and Safety Act of 2010, Preamble.

<sup>178</sup> *Id* section 16.

<sup>179</sup> Water Resources Management Act of 2011, sections 48(1) & 58(3)(c).

### 3.3. Regional Human Rights Law

#### 3.3.1. The African Charter on Human and Peoples Rights (Banjul Charter)

The African Charter on Human and Peoples' Rights (African Charter) guarantees the right to property, with the exception only in public interest.<sup>180</sup> Article 21 also protects the right to “freely dispose of [one's] wealth and natural resources”.<sup>181</sup>

The Niamey Declaration on extractive industries has interpreted this provision as an inviolable right, requesting the State Parties to ensure that revenues from extractive operations are shared with the local communities, that agreements with extractive companies are not exploitative and made with active participation of affected communities, and that all information related to the operations and other related activities of extractive companies are shared with the local communities.<sup>182</sup>

The African Charter also protects the right to health,<sup>183</sup> and mandates that all people shall enjoy a satisfactory environment favourable to their development.<sup>184</sup> The Niamey Declaration has requested that, per African Charter, environmental standards are respected, and environmental and social impacts are mitigated in extractive industries.<sup>185</sup>

The African Charter recognizes the right to life and integrity of person.<sup>186</sup> It also recognizes the right to dignity by not being degraded, tortured and subjected to cruel and inhuman treatment.<sup>187</sup>

Further, the African Charter recognizes the right to free association and freedom of assembly<sup>188</sup> and ensures that everyone has the right to freedom of movement and residence within the borders of a State.<sup>189</sup> In addition, it ensures the right to receive information and the right to free expression.<sup>190</sup>

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<sup>180</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 58 (African Charter) art. 14.

<sup>181</sup> *Id* art. 21.

<sup>182</sup> Resolution on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector (2017) ACHPR/Res. 367 (LX) (Resolution on the Niamey Declaration) para. 1(a)–(e).

<sup>183</sup> African Charter (1986) art. 16.

<sup>184</sup> *Id* art. 24.

<sup>185</sup> Resolution on the Niamey Declaration (2017) para. 1(g) & (j).

<sup>186</sup> African Charter (1986) art. 4.

<sup>187</sup> *Id* art. 5.

<sup>188</sup> *Id* arts. 10 & 11.

<sup>189</sup> *Id* art. 12.

<sup>190</sup> *Id* art. 9

### **3.3.2. Protocol to the African Charter on Human and Peoples' Rights on the Right of Women in Africa (The Maputo Protocol)**

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) mandates women's health and reproductive rights,<sup>191</sup> right to food security including drinking water, fuel, land and means of producing nutritious food,<sup>192</sup> and the right to adequate housing with acceptable living conditions in a healthy environment.<sup>193</sup> It also ensures the right to sustainable environment as well as sustainable development.<sup>194</sup>

The Maputo Protocol recognizes the right to life and integrity of person,<sup>195</sup> and recognizes a woman's right to dignity by not being degraded, tortured and subjected to cruel and inhuman treatment.<sup>196</sup> Article 13 of the Maputo Protocol also recognizes that protection of life and integrity extends to protection of economic and social welfare rights.<sup>197</sup>

### **3.3.4. The African Charter on the Rights and Welfare of the Child (African Charter on Child)**

The African Charter on the Rights and Welfare of the Child (African Charter on Child) recognizes a child's right to health including the right to hygiene and environmental sanitation.<sup>198</sup> It also recognizes the child's right to life and integrity.<sup>199</sup>

The State Party should protect the child's right to dignity by not being degraded, tortured and subjected to cruel and inhuman treatment.<sup>200</sup>

## **3.4. International Human Rights Law**

According to the United Nations Guiding Principles on Business and Human Rights, the corporations should respect the human rights obligations enlisted below,<sup>201</sup> and the States should ensure through

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<sup>191</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) (Maputo Protocol) art. 14.

<sup>192</sup> *Id* art. 15.

<sup>193</sup> *Id* art. 16.

<sup>194</sup> *Id* arts. 18 & 19.

<sup>195</sup> *Id* art. 4.

<sup>196</sup> *Id* art. 3.

<sup>197</sup> *Id* art. 13.

<sup>198</sup> African Charter on the Rights and Welfare of the Child (1990) (African Charter on Child) art. 14.

<sup>199</sup> *Id* art. 5.

<sup>200</sup> *Id* art. 16.

<sup>201</sup> UN Guiding Principles on Business and Human Rights (2011) section 12.

policies, legislation, regulations and adjudication that the corporations adhere to this duty.<sup>202</sup> Zambia has ratified all of the following international agreements except for the Voluntary Principles on Security and Human Rights.

#### **3.4.1. The Universal Declaration of Human Rights**

The Universal Declaration of Human Rights (UDHR) recognizes an individual's right to own property and not to be arbitrarily deprived of it.<sup>203</sup> The UDHR elaborates that everyone has a right to adequate standard of living including adequate food, clothing and housing.<sup>204</sup> UDHR indicates that no one shall be "subjected to torture or to cruel, inhuman or degrading treatment or punishment".<sup>205</sup> The UDHR also recognizes a person's right to life, liberty and security, which includes social security.<sup>206</sup>

UDHR protects individual labour rights. First, everyone has the right to freedom of association and peaceful assembly, and the right to join trade unions.<sup>207</sup> Everyone also has the right to rest and leisure, which includes reasonable limitation on working hours.<sup>208</sup>

#### **3.4.2. The International Covenant on Civil and Political Rights**

The International Covenant on Civil and Political Rights (ICCPR) indicate that all people may "freely dispose of their natural wealth and resources" and shall not be deprived of their own means of subsistence.<sup>209</sup>

ICCPR directs that no one shall be "subjected to torture or to cruel, inhuman or degrading treatment or punishment".<sup>210</sup>

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<sup>202</sup> *Id* section 1.

<sup>203</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res. 217 A(III) art. 17.

<sup>204</sup> *Id* art. 25(1)

<sup>205</sup> *Id* art. 5.

<sup>206</sup> *Id* arts. 3 & 22.

<sup>207</sup> *Id* arts. 20(1) & 23(4).

<sup>208</sup> *Id* art. 24.

<sup>209</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art. 2(2);

<sup>210</sup> *Id* art. 7.

ICCPR protects an individual's right to liberty of movement and freedom to choose one's own residence.<sup>211</sup> ICCPR recognizes a person's right to life, liberty and security, which includes social security.<sup>212</sup> ICCPR recognizes and protects the right to seek and receive information of all kinds.<sup>213</sup>

ICCPR also indicates that everyone has the right to freedom of association and peaceful assembly, and the right to join trade unions.<sup>214</sup>

### **3.4.3. The International Covenant on Economic, Social and Cultural Rights**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) elaborates that everyone has a right to adequate standard of living including adequate food, clothing and housing.<sup>215</sup> The ICESCR also recognizes a person's right to life, liberty and security, which includes social security.<sup>216</sup>

Everyone has the right to favourable working conditions.<sup>217</sup> Under article 11 of the ICESCR, State Parties should recognize the right to an adequate standard of living, which includes access to food and clothing.<sup>218</sup> The right to food is realized when every man, woman and child, alone or in community with others, has the physical and economic access at all time to adequate food and means for its procurement.<sup>219</sup> Availability of food refers to, among others, the possibilities either for feeding oneself directly from productive land or other natural resources.<sup>220</sup>

### **3.4.4. Convention on the Rights of the Child**

Moreover, the Convention on the Rights of the Child recognizes the children's right to health through adequate nutritious food and clean drinking water.<sup>221</sup>

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<sup>211</sup> *Id* art. 11.

<sup>212</sup> *Id* arts. 6 & 9.

<sup>213</sup> *Id* art. 19.

<sup>214</sup> *Id* art. 22.

<sup>215</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) art. 11(1).

<sup>216</sup> *Id* art. 9.

<sup>217</sup> *Id* art. 7.

<sup>218</sup> *Id* art. 11(1).

<sup>219</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999, para 12, available at: <http://www.refworld.org/docid/4538838c11.html> [accessed 16 October 2018].

<sup>220</sup> *Id* at para. 6.

<sup>221</sup> Convention on the Rights of the Child (1989) art. 24(2)(c).

### **3.4.5. The Declaration on the Rights of Indigenous Peoples**

The Declaration on the Rights of Indigenous Peoples, which was adopted by the General Assembly and to which Zambia is a Signatory Party, also recognizes the indigenous peoples' right to lands, territories and resources that have been traditionally owned and inherited.<sup>222</sup> Moreover, it states that the peoples shall not be forcibly removed from their lands or territories, and shall not be relocated without the free, prior and informed consent.<sup>223</sup>

### **3.4.6. ILO Conventions; ILO Declaration on Fundamental Principles and Rights at Work**

ILO Conventions and the ILO Declaration on Fundamental Principles and Rights at Work protect individual labour rights. Under these instruments, everyone has the right to freedom of association and peaceful assembly, and the right to join trade unions.<sup>224</sup>

### **3.4.7. Voluntary Principles on Security and Human Rights**

Moreover, the Voluntary Principles on Security and Human Rights elaborates that companies working with public security should ensure through active monitoring and reporting that the actions of public security are consistent with promoting human rights and proportional to the threat imposed.<sup>225</sup> Especially, the public security should not violate the rights of individuals when they are exercising their rights to freedom of association, peaceful assembly and collective bargaining, or other rights recognized by UDHR and the ILO Declaration on Fundamental Principles and Rights at Work.<sup>226</sup>

### **3.4.8. ILO Safety and Health in Mines Convention**

Finally, Zambia has also ratified the ILO Safety and Health in Mines Convention. Articles 4 and 13 of the Convention require a State Party to ensure a mine worker's right to report and be aware of any safety and health issues arising at the workplace.<sup>227</sup>

## **3.5. Conclusion**

Zambia has laws and regulations with progressive provisions aimed at minimizing the negative impacts of mining companies on human rights. Moreover, Zambia affirmed its obligation to protect and

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<sup>222</sup> Declaration on the Rights of Indigenous Peoples (13 September 2007) art. 26.

<sup>223</sup> *Id* art. 10.

<sup>224</sup> ILO Freedom of Association and Protection of the Right to Organize Convention (1948) Preamble, arts. 2 & 11; ILO Right to Organise and Collective Bargaining Convention (1949) arts. 1 & 3; ILO Declaration on Fundamental Principles and Rights at Work (adopted on 18 June 1998) art. 2.

<sup>225</sup> Voluntary Principles on Security and Human Rights (2000) section on *Interactions Between Companies and Private Security*, para. 4.

<sup>226</sup> *Id* at para. 7.

<sup>227</sup> ILO Safety and Health in Mines Convention (1995) arts. 4 & 13.

respect the rights of victims of mining operation by ratifying several international and regional human rights instruments discussed. Accordingly, the following chapter will apply the legal framework above to the facts of several past and ongoing relevant cases and incidences.

## CHAPTER 4: APPLICATION OF THE LEGAL FRAMEWORK TO THE FACTS

### 4.1. Introduction

This Chapter will apply the legal framework in Chapter three (3) to the facts of several past and ongoing cases related to human rights violations in the Zambian mining sector discussed in Chapter two (2). In applying the legal framework to the facts, it discusses the human rights violation implicated in each of the cases, in particular the right to property, the right to a clean, safe and healthy environment, the right to life, liberty and security, the right to livelihood and /or economic activities, labour rights and the right to information.

### 4.2. Right to Property

The Constitution of Zambia protects the right to property and the right not to be deprived of one's property without adequate compensation,<sup>228</sup> and Zambia has ratified binding international treaties that guarantee the right to property.<sup>229</sup>

On the one hand, the Constitution protects the rights to property and to not be deprived of one's property without compensation,<sup>230</sup> while on the other hand, it permits taking of land without adequate compensation when the taking is for prospecting or exploitation of minerals subject to "provid[ing] for the respective interest of persons affected".<sup>231</sup> This makes the Constitution's provisions contradictory and also in conflict with international human rights treaties that prohibit deprivation of property without adequate compensation. Besides, the article is ambiguous and provides no guidance on what qualifies as providing for the interest of affected persons.

Although the grant of mining or processing rights under the MMDA does not equate to expropriation of the land in the ordinary sense, its practical effects amount to expropriation because it has the effect of depriving the owner or occupier of the part of the land and certain important incidents of ownership or occupation. The MMDA authorizes uncompensated deprivation of land because it grants the holder of a mining license the authority to enter the land and carry out mining operations without obtaining

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<sup>228</sup> Constitution of Zambia (1996) arts. 11(d) & 16(1).

<sup>229</sup> See UDHRU art. 17; ICCPR art. 2(2); art. 1(2); Declaration on the Rights of Indigenous Peoples, art. 26.; African Charter art. 14.

<sup>230</sup> Constitution of Zambia (1996) arts. 3(4)(a)(c), 11(d) & 16(1).

<sup>231</sup> *Id* art. 16(2)(o).

consent of the owner or legal occupier for as long as the operations are not within 180 meters from a residence, 45 meters from a field or crops, or 90 meters from a deep tank or a dam.<sup>232</sup>

Rural communities in Zambia, like the Musele community described in Chapter 2, “tend to live in dispersed settlements,” practicing shifting agriculture (“rotational farming where land is cleared, cultivated and then left to regenerate for few years”), and using surrounding areas for foraging, tending livestock and fishing.<sup>233</sup> These communities may be prevented from using the land reserved for the purposes mentioned above if such land is beyond the specified meters above a situation not allowed in other jurisdictions of the region. For example, the South African Constitutional Court in the landmark case of *Malendu and Others v Iterelenga Bakgatla Mineral Resources (Pty) Limited and Another*<sup>234</sup> said that “[t]he existence of mineral rights does not of itself extinguish rights of landowners or any other occupier of the land in question”.<sup>235</sup>

Besides, the MMDA fails to reconcile the competing rights and interests of owners and occupiers of land and those of the holder of a mining right. Although the holder of a mining right is required to exercise the rights in a reasonable manner that is least injurious to the owner or occupier of the land, the person is not required to stop ordinary and reasonable mining operations simply because the operations are detrimental to the interests of the owner or occupier of the land.<sup>236</sup> If anything, it is a criminal offence for the owner or occupier of the land to obstruct, hinder or delay a holder of a mining right from entering and carrying on operations on the without a reasonable excuse.<sup>237</sup> The right to access land is likely never exercised as it would easily be deemed to interfere with exploration and other incidental activities under the mining license.<sup>238</sup> Besides, as demonstrated in Chapter 2, mining areas are restricted and often fenced off, making it practically impossible for surface right holders to access.

Some of the other problems related to the right to property identified by the Zambian Human Rights Commission are that there are no guidelines to protect communities through the consultation,

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<sup>232</sup> MMDA of 2015, section 52(b).

<sup>233</sup> Human Rights Watch( Supra note 18) 23.

<sup>234</sup> *Malendu and Others v Iterelenga Bakgatla Mineral Resources (Pty) Limited and Another* [2018] ZACC 41.

<sup>235</sup> *Id* at para. 102.

<sup>236</sup> MMDA of 2015, section 53.

<sup>237</sup> *Id* section 107.

<sup>238</sup> *Id* section 54(1).

resettlement and compensation processes.<sup>239</sup> In addition, there is lack of transparency in how compensation is calculated as it is done at the discretion of the mining company.<sup>240</sup>

These problems can be demonstrated in the case of the Musele community. The community reported consultation began very late in the process and it was not comprehensive, informative or transparent.<sup>241</sup> FQM ought to have supplied the community with sufficient information and sufficient time to enable the community to consent or object.<sup>242</sup> However, the community reported that FQM was not willing to speak with them,<sup>243</sup> that the community was unaware of the terms of the agreement and that the compensation presented was not calculated in a transparent manner.<sup>244</sup> Therefore, the community never gave effective consent.

To be effective and valid, consent must be given freely, voluntarily and in full knowledge of the rights waived in consequence of the consent.<sup>245</sup> As the facts reveal, the Musele community members were not fully informed of the nature the consequences that would follow from surrendering their land rights and thus, did not give a legally valid and effective consent to FQM.

The situation in the Musele community does not meet the international human rights standard. The African Commission has guided that under the African Charter, the provision of all the necessary information as well as substantive and rigorous participation is particularly peremptory where exploration and extraction of natural resources necessitate expropriation of land from the affected people or such other restriction to resources that they depend on for livelihood.<sup>246</sup> Moreover, the experience of Musele community is not in sync with Committee on the Elimination of Discrimination Against Women's (CEDAW) General Recommendation No. 34 that a State Party shall "obtain the free

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<sup>239</sup> Zambia Human Rights Commission 2016( *supra* note 14) 13.

<sup>240</sup> *Id* at 46.

<sup>241</sup> Mwandawande (*supra* note 94) paras. 4.1.1.4 & 4.1.1.6.

<sup>242</sup> *Id* at 491.

<sup>243</sup> *Id* at 4.1.1.4.

<sup>244</sup> Mis ( *supra* note 95).

<sup>245</sup> *Mohamed and Another v President of the Republic of South Africa and Others* (2001) ZACC 18, paras. 62–64; see also *Laws v Rutherford* 1924 AD 261, 263.

<sup>246</sup> African Commission on Human & Peoples' Rights (ACHPR), *State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries and Environment* (2018) para. 40.

and informed consent of rural women prior to approval of any acquisitions or projects affecting rural lands or territories and resources,” and provide adequate compensation.<sup>247</sup>

### 4.3. Right to Clean, Safe and Healthy Environment

Chapter 3 above has outlined various domestic laws with provisions aimed at ensuring a clean, safe and healthy environment.<sup>248</sup> A holder of a mining right is strictly liable for any air, water or soil contamination or damage to biodiversity caused by mining or mineral processing and is required to compensate any person who suffers damage or harm as a result.<sup>249</sup> Zambia has also ratified international treaties that guarantee the right to a clean, safe and healthy environment.<sup>250</sup>

Despite the domestic laws and ratifications of international treaties, residents and communities living in or near mining operations are not enjoying these rights, because mining operations are causing damages to the environment.

Specific reported cases demonstrate the challenges in realising the right to a clean, safe and healthy environment in Zambia. The case of *Konkola Copper Mines Plc vs James Nyasulu and 2000 Others* illustrates how KCM polluted the water source of a community in the Copperbelt Province’s Chingola District.<sup>251</sup> Similarly the case of *Lungowe & Others v Vendata Resources Plc and Konkola Copper Mines Pl* illustrates how community members suffered injuries and damages due to KCM’s release of the toxic effluent, causing environmental damages.<sup>36</sup> *Mithi v Mopani Cooper Mines Plc and the Attorney General* demonstrates how Beatrice Sala Mithi, who died after being exposed to toxic fumes emitted by Mopani Copper Mines (MCM).<sup>252</sup> In the case of *Doris Chinsambwe and 65 others v NFC Africa Mining*,<sup>253</sup> crops were damaged due to pollution discharged from the defendant’s tailings dam. Even

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<sup>247</sup> CEDAW, General Recommendation No. 34 on the rights of rural women, CEDAW/C/GC/34 (2016) para. 62(d).

<sup>248</sup> Constitution of Zambia (Amendment) Act No. 2 of 2016, arts. 43, 151(2)(f), 256 & 257. *See also*, EMA of 2011, section 4; Water Resources Management Act of 2011 sections 48(1) & 58(3)(c).

<sup>249</sup> MMDA of 2015, sections 87(1)(2)(4) & (5)(e).

<sup>250</sup> African Charter (1986) arts. 16 & 24; Maputo Protocol (2005) arts. 14, 15, 16, 17, 18 & 19; African Charter on Child (1990) art. 14; UDHR (1948) art. 25(1); ICESCR (1976) art. 11(1); Convention on the Rights of the Child (1989) art. 24(2)(c).

<sup>251</sup> *Konkola Copper Mines*(*supra* note 66) J2.

<sup>252</sup> *Mopani Copper Mines Plc v Geoffrey Elliam Miti and Attorney General* (Appeal No. 154/2016) 2016/SCZ/8/177.

<sup>253</sup> *Doris Chinsambwe*(*supra* note 88).

in North-Western Province where mining operation started recently, the water boreholes provided for the resettled community have elevated levels of iron.<sup>254</sup>

Based on these examples, it would be safe to conclude that the right to live in a safe, clean and healthy environment is not, in practice, respected in the mining sector in Zambia.

Besides, the existing institutions have not been effective in addressing and remedying the situation. ZEMA notoriously lacks the will and capacity to monitor and enforce environmental regulations.<sup>255</sup> As was admitted by an employee of ZEMA (“PW6”) testifying in the *Mithi* case, ZEMA has a history of not penalizing the mines for not complying with the regulations, and at the time of *Mithi* trial, Mopani was still not compliant. He stated that “ZEMA had failed the people of Mufulira”.<sup>256</sup>

However, even if ZEMA had the will and capacity to monitor and enforce, it would still not be able to enforce environmental laws against most of the mining companies. As the Auditor General remarked on the lack of enforcement by ZEMA in relation to Mopani, “ZEMA was unable to take any action against the company as clause 12.4 [12.3] of the Developmental Agreement virtually gave the company immunity against any punitive measures by Government and any of its agencies during the stability period which ends in June 2015.”<sup>257</sup> Besides, the penalties for environmental damage are not punitive enough to deter would-be-offenders.<sup>258</sup> Instead, these penalties make ZEMA’s efforts and investment in investigations and prosecution not worth most of the outcomes.

The prevailing situation in mining towns and territories in Zambia fails to comply with existing domestic legislation and international agreements that all recognize and guarantee the right to a safe, clean and healthy environment.

#### **4.4. Right to Life**

Despite the Constitutional guarantee of the right to life<sup>259</sup> and the MMDA provision for strict liability on owners of mining licenses who cause harm due to their mining activities including personal injuries

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<sup>254</sup> *Id* at 30.

<sup>255</sup> See Report of the Auditor General on the Management of Environmental Degradation Caused by Mining Activities in Zambia (July 2014) available at <http://www.ago.gov.zm/reports/Special/2014/OAG%20Management%20of%20Environmental%20Degradation.pdf> (last accessed 31 July 2018) 13–14.

<sup>256</sup> *Mithi v Mopani Cooper Mines Plc and the Attorney General* (2014/HB/028) Unreported J15.

<sup>257</sup> Report of the Auditor General (*supra* note 262)19.

<sup>258</sup> National Assembly of Zambia *Report of the Committee on Legal Affairs*( *supra* note 60) 16.

<sup>259</sup> Constitution of Zambia (Amendment), Act 2 of 2016, art. 11(1).

and death,<sup>260</sup> Chapter 2 has revealed a very dire situation. As the Human Rights Commission found, mining activities in Zambia has led to long-term and often deadly health problems such as cancer, affecting one's right to life.<sup>261</sup>

The health of residents of several mining towns in Copperbelt who have continued to be exposed to sulphur dioxide and <sup>262</sup> higher copper concentrations in the soil<sup>263</sup> are in real and serious danger. Equally, the health of over tens of thousands of residents in Kabwe (including 3,000 children) were estimated to have been affected by high lead levels,<sup>264</sup> and to be in serious danger of their lives as lead is silent killer.<sup>265</sup> Likewise, the plaintiffs and their families in *James Nyasulu*, 1800 claimants and their families in the *Lungowe* case, thousands of residents of Musele Chiefdom in North-Western Province, residents of the Kankoyo Township in Mufulira, and countless residents and communities that depend on the Kafue River for water, are in real and serious danger.<sup>266</sup> The lives of the residents in all these cases have been compromised contrary to the guarantees in the Zambian Constitution and binding treaties ratified by Zambia.

Moreover, death resulting from use of excessive and unjustifiable force by security forces during a riot or insurrection violates the right to life.<sup>267</sup> For example, in *Albert Mwanaumo and 5 others v NFC Africa Mining Plc and 2 others*,<sup>268</sup> the High Court found that the shooting of unarmed mine workers mounted to unjustifiable and excessive use of force.<sup>269</sup>

Death and injuries due to use of unjustifiable and excessive force by public and private security forces during labour-related protests would have been minimized if Zambia had ratified, domesticated and

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<sup>260</sup> MMDA of 2015, section 87.

<sup>261</sup> Zambia Human Rights Commission *2010 State of Human Rights Report in Zambia: Human Rights & the Environment* (2010) 45.

<sup>262</sup> The World Bank (*supra* note 12) para. 12.

<sup>263</sup> Ncube, Banda and Mundike(*supra* note **Error! Bookmark not defined.**) at 37.

<sup>264</sup> Zambia Ministry of Mines and Mineral Development *Environmental and Social Management Framework: Zambia Mining Environmental Remediation and Improvement Project* (2016) para. 3.9.

<sup>265</sup> Lindahl(*supra* note 32).

<sup>266</sup> See sections 2.3, 2.5, 2.5.1, 2.5.2, 2.5.4 and 2.5.5 in Chapter 2 above.

<sup>267</sup> The Constitution of Zambia (1996) art. 12(3)(c).

<sup>268</sup> *Albert Mwanaumo and 5 Others v NFC Africa Mining Plc and 2 Other* (2001) 2006/HK/385 ZMHC1.

<sup>269</sup> *Id.* at J28.

implemented the Voluntary Principles on Security and Human Rights<sup>270</sup> which require that actions of public security are consistent with promoting human rights and proportional to the threat imposed.<sup>271</sup>

#### **4.5. Right to Dignity and to Be Free from Inhuman and Degrading Treatment**

Human dignity is guaranteed by international instruments<sup>272</sup> binding on Zambia and is one of the national values and principles of Zambia.<sup>273</sup> Zambian courts are mandated to apply human dignity when interpreting enforceable right.<sup>274</sup>

In the South African Constitutional Court case of *S v Makwanyane*,<sup>275</sup> O'Regan J stated that "[r]ecognising a right to dignity is an acknowledgment of the intrinsic worth of human beings: human beings are entitled to be treated as worthy of respect and concern".<sup>276</sup> In all the cases described in Chapter 2, the residents and communities have not been treated as human beings worthy of respect and concern.

On the connection between human dignity and land, the renowned author, Frantz Fanon in his book titled "The Wretched of the Earth"<sup>277</sup> said that, "[f]or a colonized people the most essential value, because the most concrete, is first and foremost the land: the land which will bring them bread and, above all dignity".<sup>278</sup> The South African Constitutional Court approved Fanon's statement in the landmark case of *Malendu and Others v Iterelenga Bakgatla Mineral Resources (Pty) Limited and Another*<sup>279</sup> in which it stated "[t]hus strip someone of their source of livelihood, and you strip them of their dignity".<sup>280</sup> The Musele community lost access to the land they depended on for growing food, fetching water, and fishing without fair and adequate compensation. They have been stripped of their source of livelihood, and consequently their dignity.

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<sup>270</sup> Voluntary Principles on Security and Human Rights (2000).

<sup>271</sup> *Id.* section on *Interactions Between Companies and Private Security*, para. 4.

<sup>272</sup> See UDHR (1948) art. 1; see also ICESCR (1966) Preamble; CEDAW (1979) Preamble; ICCPR (1966) article 1; African Charter arts. 3(1) & 5.

<sup>273</sup> Constitution of Zambia (Amendment), Act 2 of 2016, art. 8(d).

<sup>274</sup> *Id.* art. 9(1)(a).

<sup>275</sup> *S v Makwanyane*(1995)ZACC 3.

<sup>276</sup> *Id.* para.328.

<sup>277</sup> Frantz Fanon, *The Wretched of the Earth* (Grove Press, 1963).

<sup>278</sup> *Id.* at 43.

<sup>279</sup> *Malendu and Others v Iterelenga Bakgatla Mineral Resources (Pty) Limited and Another* [2018] ZACC 41.

<sup>280</sup> *Id.* para.1.

The Zambian constitution and international human rights instruments that Zambia ratified prohibit torture and inhuman and degrading treatment.<sup>281</sup> Inhuman and degrading treatment is generally understood to include treatment that humiliates or debases a person. The Supreme Court of Zimbabwe held in *Mukoko v Attorney General*<sup>282</sup> that “[d]egrading treatment is treatment which when applied to or inflicted on person humiliates and debases him or her showing a lack of respect for or diminishing his or human dignity”.<sup>283</sup>

Residents and communities in all the cases described under Chapter 2 have been humiliated and debased in violation of both domestic and international laws.

#### **4.6. Right to Livelihood/ Economic Activities**

As detailed in Chapter 3, the MMDA provides for strict liability for damages or harm caused by holders of mining licenses,<sup>284</sup> but this section have not been relied upon or applied in cases where it could have been helpful. For example, in the *Doris Chinsambwe* case, the plaintiffs attempted to rely on the strict liability provision in section 123 of the MMDA of 2008; however, the High Court found they could not rely on this provision as the cause of action was not raised in the original submissions.<sup>285</sup> Instead, the plaintiffs relied on the theory of negligence and nuisance.

International treaties binding on Zambia protect the right to freely dispose of one wealth and natural resources and to not be deprived of one’s means of subsistence, so that people have secure access to and can benefit from their wealth and natural resources.<sup>286</sup>

The Nyasulu case and the Musele community incidences described in Chapter 2 present a clear violation of the above-mentioned right. For example, plaintiffs in *Nyasulu* presented evidence of damage to their agricultural activities due to the discharges and sediments from the Konkola’s mining operations.<sup>287</sup> Similarly, the displaced members of the Musele community have lost the ability to

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<sup>281</sup> Constitution of Zambia, Act 8 of 1996, art. 15; African Charter (1986) art. 5; African Charter on Child (1990) art. 16; Maputo Protocol (2005) art. 3; Universal Declaration of Human Rights (adopted 10 December 1948) art. 5; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) art. 7.

<sup>282</sup> *Mukoko v Attorney General* (Const. Application No. 36/09, 2012) ZWSC 11.

<sup>283</sup> *Id* at 13.

<sup>284</sup> MMDA of 2015, section 87.

<sup>285</sup> *Doris Chinsambwe and 65 others v NFC Africa Mining* (2014) HK 374, J11.

<sup>286</sup> African Charter (1981) art. 21; ICCPR (1966) art. 2; ICESCR (1966) art. 1(2).

<sup>287</sup> *Konkola( Copper Mines PLC v James Nyasulu and 2000 others*(Appeal No. 1/2012) unreported

continue their farming activities, and need to purchase food instead, threatening their food security.<sup>288</sup> If the Zambian law was in conformity with the African Charter and strictly enforced, the incidences above would have been prevented or their negative impacts drastically reduced.

Also, foreign direct investment in extractive industries has not translated into direct benefits for the community. Only 0.81% of tax revenue from these companies goes to the local government; 95.87% goes to the central government.<sup>289</sup> There are no guidelines on how this small amount of money should be used to benefit the communities.<sup>290</sup> Again this sharing is not in conformity with international human rights law, particularly the African Charter, which entitles the local people to “benefit from the proceeds of the extraction and sale of the resources”.<sup>291</sup>

People affected by land dispossession should be provided with full, effective, fair and adequate compensation and support for rehabilitation.<sup>292</sup> Unlike what transpired in the Musele community, compensation ought “to be made available prior to [their] removal . . . from their land and has to be determined in consultation with the affected people and should not in any way make their living conditions worse off”.<sup>293</sup>

#### **4.7. Right to Information, consultation, and participation**

International treaties ratified by Zambia guarantee the right to information and freedom of expression.<sup>294</sup> According to the African Commission, people who may be affected by the mining operations should have an opportunity to participate meaningfully and have their views incorporated in order to minimize the impact of possible expropriation and resettlement.<sup>295</sup> EMA also grants the public a right to be informed and to participate in decisions related to the environment,<sup>296</sup> and for the affected communities to express their views through public hearings, public reviews and public

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<sup>288</sup> Mwandawande(*supra* 94) para. 4.1.1.7.

<sup>289</sup> Zambia Human Rights Commission 2016(*supra* note 239) at 11.

<sup>290</sup> *Id.*

<sup>291</sup> *Id* para11

<sup>292</sup> African Charter (1981) art. 21(2); ACHPR(*supra* note 257) para. 15.

<sup>293</sup> ACHPR(*supra* note 257) para. 34.

<sup>294</sup> African Charter (1986) art. 9; African Charter on Child (1990) art. 7; ICCPR (1966) art. 19; ILO Safety and Health in Mines Convention (1995) art. 13(1)(d).

<sup>295</sup> ACHPR (*supra* note 257)para. 23.

<sup>296</sup> EMA of 2011, section 91.

participation.<sup>297</sup> However, there is no mandatory requirement that these views should be incorporated in any decisions relating to the intended mining project. This is inconsistent with the international human rights law, particularly the African Charter.

The complaints from the Musele community are good evidence that Zambia laws on access to information, consultation and participation do not meet the international standards. The community reported consultation began very late in the process and it was not comprehensive, informative or transparent.<sup>298</sup>

Besides, Zambian law and regulation on EIAs do not refer to international human rights constituent principles of Free, Prior Informed Consent (EPIC) when making decision relating to environment and social impacts.<sup>299</sup> Further, the ESIA is only mandatory before commencement of the project<sup>300</sup> and but not in the later stages of the mine cycle.

Despite the law,<sup>301</sup> a developer is not under a duty to communicate or disseminate information using the local or traditional ways of communication. Mass media is simply not appropriate because the mostly poor rural communities may not have access to mass media such as TV, radio and newspaper, and cannot be considered to be an accessible form of communication even if it was in local languages.

#### **4.8. Labour Rights and Freedom of Association**

Although the Zambia Human Rights Commission has found that the labour laws comply with international standards,<sup>302</sup> case examples from Chapter 2 lead to a conclusion that the laws are not effectively in practice. In 2011, the Human Rights Watch released a report condemning the health and safety conditions in the Chinese mining companies which included falling rocks, poor ventilation leading to long-term lung problems, and exposure to hazardous chemicals.<sup>303</sup>

In 2017, a Committee of the Zambia National Assembly noted that although casual employment was outlawed in 2015, the use of contractors has continued to be a conduit for the exploitation of workers

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<sup>297</sup> *Id* sections 91, 92, 93 & 94.

<sup>298</sup> Mwandawande(*supra* note 94) paras. 4.1.1.4 & 4.1.1.6.

<sup>299</sup> *Id*.

<sup>300</sup> *Id* at 12.

<sup>301</sup> Environmental Protection and Pollution Control (EIA) Regulations of 1997, Regulations 2 & 10(a).

<sup>302</sup> Zambia Human Rights Commission 2016( *supra* note 14)14.

<sup>303</sup> Human Rights Watch(*supra* note 18) 1.

and further, that most of the contractors engaged by mining companies have been found to offer poor working conditions.<sup>304</sup> In addition, the Committee noted that workers were employed on short term contracts which prevented them from joining labour unions and participating in collective bargaining.<sup>305</sup> The use of contractors prevents mining workers from enjoying their constitutional rights to freedom of association, in particular “to form or belong to any political party, trade union or other association for the protection of his interests.”<sup>306</sup>

Additionally, the Occupation Health and Safety Act does not contain any civil or criminal sanction to punish violators of the Act, not providing the victims any means of remedy or redress.<sup>307</sup> Finally, the bodies entrusted with enforcing labour standards are chronically under-resourced, making the enforcement of standards very difficult.<sup>308</sup> In the end, the protections in written law remain theoretical.

#### **4.9. Access to Remedy and Justice**

The right to a remedy is central to all human rights and is also embedded in the right to access justice.<sup>309</sup> This requires putting in place judicial and non-judicial grievance mechanisms that are adequately equipped and resourced to handle cases involving mining companies.<sup>310</sup> Such mechanisms “should be accessible to affected people”, and “[a]ccessibility entails not only physical proximity but also importantly familiarity and flexibility of the processes to allow affected people to easily bring their complaints”.<sup>311</sup> In terms of the African Charter, effective access to the courts require that the procedural requirement do not impose restriction on the ability of people to bring legitimate complaints,<sup>312</sup> and that legal aid and other measures are available to affected persons and communities.<sup>313</sup>

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<sup>304</sup> National Assembly of Zambia *Report of the Committee on Legal Affairs*(*supra* note 60)16 para.

<sup>305</sup> *Id.*

<sup>306</sup> Constitution of Zambia (1996) art. 21(1).

<sup>307</sup> *Id* 50.

<sup>308</sup> *Id* 18; Human Rights Watch(*supra* note 18).

<sup>309</sup> ACHPR(*supra* note257)) para. 15.

<sup>310</sup> *Id* at para. 42.

<sup>311</sup> *Id.*

<sup>312</sup> *Id.*

<sup>313</sup> *Id* at para. 19(q).

Although Zambia has established both judicial and non-judicial mechanisms for redress or remedy, communities affected by mining operations have been unable to access justice to obtain an effective remedy. This fact has been confirmed in the *Lungowe* case,<sup>314</sup> where claimants were allowed to commence their action in UK because they would most certainly not have gotten access to justice if their claims were pursued in Zambia.<sup>315</sup> The UK courts found that there was no prospect that claimants would obtain legal Aid from the Zambian government as the Legal Aid Board was not capable of funding or commencing a large environmental claim of 1,800 claimants.<sup>316</sup> In addition to high poverty that makes it impossible for the majority poor to access legal services they also, “*have no idea how to get a lawyer, how the procedure starts*”.<sup>317</sup>

Even in the cases where the communities were able to access the court, they did not receive an effective remedy. In *Nyasulu*, the Supreme Court upheld the trial judge’s ruling on liability but found that the judge had been wrong to award damages to each of the claimants because only twelve medical report forms were produced and admitted into evidence.<sup>318</sup> Thus, the Supreme Court ordered that only the twelve plaintiffs who had submitted the medical report forms could recover. The remaining 1,989 plaintiffs were not entitled to any damages at all.<sup>319</sup>

Finally, the MMDA imposes an ambiguous restriction on people’s ability to bring complaints before the courts. It mandates that the cause of action lapse after reasonable time from when the affected person or community could have reasonably be expected have learnt of the harm or damage.<sup>320</sup> Such limitation and ambiguity is clearly contrary to the provisions of the African Charter on remedy.

#### **4.10. Conclusion**

The impact of the extractive industries sector in Zambia affects many important rights including the right to property, the right to life, and the right to clear, safe and healthy environment. While there is

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<sup>314</sup> *Dominic Liswaniso Lungowe & Others v Vendata Resources Plc and Konkola Copper Mines Plc* (2017) EWCA 1528.

<sup>315</sup> *Id* at para. 131; see also *Dominic Liswaniso Lungowe & Others v Vendata Resources Plc and Konkola Copper Mines Plc* (2016) EWHC 975 (TCC) at para. 198.

<sup>316</sup> *Dominic Liswaniso Lungowe & Others v Vendata Resources Plc and Konkola Copper Mines Plc* (2017) EWCA 1528 at para. 126.

<sup>317</sup> *Dominic Liswaniso Lungowe & Others v Vendata Resources Plc and Konkola Copper Mines Plc* (2016) EWHC 975 (TCC) at para. 184(a).

<sup>318</sup> *Konkola Copper Mines PLC v James Nyasulu and 2000 others* (Appeal No. 1/2012) SCZ/8/250/2011.

<sup>319</sup> *Id.*

<sup>320</sup> MMDA of 2016 section 87(7).

law that provides protections for individuals and their human rights, there is a chronic lack of enforcement of the law. In addition, there are fairly large gaps in the existing law including the lack of concrete requirements for consultations with local communities. The following chapter will summarise the entire study, present the key finds, answer the primary question of this dissertation and make some recommendation for to the government of Zambia.

## **CHAPTER 5: CONCLUSION AND RECOMMENDATIONS**

### **5.1. Summary**

The extractive industries sector is, arguably, a leading violator of human rights in Africa. The violations of human rights are severe in countries like Zambia that is heavily dependent on the mining sector, in particular copper mining, which has been the backbone of the economy for over 70 years.

However, for over 70 years, there have been no formal mine closures, and a lack of concurrent rehabilitation of mining sites has caused a massive environmental damage. Commonly reported perils of mining projects and operations in Zambia include: environmental damage through contamination of land, air and water; health hazards; forced relocations; alterations of social structures; poor and unsafe working conditions and standard and the use of excessive force by both public and private security forces. Zambia has difficulties maintaining a proper balance between the positive and the unaddressed negative impacts of mining.

This study has analysed the situation of violation of human rights by the Zambian mining sectors and contends that the existing legal framework is ineffective in addressing the situation.

### **5.2. Key Findings**

Chapter two provided the contextual background of the situation of human rights violations in the mining sector in Zambia. It provided a brief background and discussed the reported incidences and cases that illustrates the persistent human rights violations in the mining sector. These violations include, air, water, and soil pollution, land degradation, and the displacement of rural communities without consultation and fair compensation. Mining workers are subjected to poor and unsafe working conditions and standard and the use of excessive force by both public and private security forces. The GRZ has been active with the main focus on generating revenue to the detriment of environment, health, and public safety.

Chapter three summarised the relevant provisions of Zambia's regulatory framework and applicable regional and international instruments. The summary reveals that Zambia has laws and regulations with progressive provisions aimed at minimizing the negative impacts of mining operations on human rights. Moreover, Zambia affirmed its obligation to protect and respect the rights of victims of mining operation by ratifying several international and regional human rights instruments.

Chapter four applied the legal framework in Chapter three to the facts of several past and ongoing cases related to human rights violations in the Zambian mining sector in Chapter two. In applying the legal framework to the facts, it discussed the rights violation implicated in each of the case, in particular the right to property, the right to clean, safe and healthy environment, the right to life, the right to dignity and to be free from inhuman and degrading treatment, the right to livelihood and /or economic activities, labour rights, the right to information, and the right to a remedy and access to justice . It concluded that while there is law that provides protections for individuals and their human rights, there is a chronic lack of enforcement of the law. In addition, there are fairly large gaps in the existing law including the lack of concrete requirements for consultations with local communities.

### **5.3. Conclusion**

In conclusion, in answering the primary question, the research suggests that the Zambian legal framework is, at present, ineffective in addressing human rights violation in the mining sector. While the law provides protections of human rights, there is a chronic lack of enforcement of the law and underfunding of most of the major regulatory bodies. The majority of victims are poor and unable to access justice without the provision of meaningful legal aid. In addition, there are fairly large gaps between the existing domestic laws and regional and international laws. Besides, the Zambian legal framework lacks concrete requirements for consultations with and participation of local communities.

### **5.4. Recommendations**

To make the legal framework effective, it is recommended that GRZ:

- Domesticating all relevant provisions of international and regional human rights instruments that Zambia has ratified, as well as the UN Guiding Principles on Business and Human Rights and the State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and Environment.
- Take legislative and other appropriate measures to safeguard the human rights of workers indirectly employed by mine contractors, including by ensuring that parent mining companies are liable for the human rights violation of their contractors.
- Amend EMA and relevant laws to provide for stiffer penalties for violating environmental laws.
- Amend EMA and its Regulations to provide for mandatory EIA at prescribed regular intervals during the life cycle of a mine and after its closure.
- Amend MMDA to strengthen and protect the surface rights of the landowners and occupiers.
- Enact legislation to support the Guidelines and Policy on resettlement and compensation

- Enact laws and regulation to provide detailed guidelines and requirements for reception of information, consultation and public participation of the affected communities that are consistent with international and regional instruments.
- Ratify, domesticate and implement the Voluntary Principles on Security and Human Rights

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