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An assessment of sustainability reporting as a tool for promoting corporate accountability by selected mining companies in Zimbabwe - *Mutuso Dhliwayo and Michelle N. Chitando*

Bridging the gap between gender, climate finance and food security in the human rights discourse, a case study of women smallholder farmers in Murewa District in Zimbabwe - *Rosalie K. Katsande and Nesia C. Manguleni*

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Violence and vulnerabilities: experiences of female vendors in artisanal mining spaces in Mazowe, Zimbabwe – *Tsungai R. Nondo and Abigail R. Benhura*

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FOREWORD

The 2024 Midlands State University Law Review (MSULR) Special Issue is a culmination of endless possibilities that exist in academia underwritten by cooperation across several stakeholders in the justice delivery system. From its humble beginnings, the MSULR has continued to grow in stature and its reputation as a credible and relevant platform for a scientific interrogation of the current legal developments in Zimbabwe. In this regard, the MSULR remains an important outlet in the Zimbabwean legal system which champions jurisprudential development.

The five research papers contained herein are the final, peer reviewed papers from the 2023 National Symposium on Business and Human Rights, held at Cresta Lodge, Harare, Zimbabwe, on 25 and 26 October 2023, under the Zimbabwe Human Rights Capacity Development Programme (hereinafter ‘Zimbabwe Programme’). The overall objective of the Zimbabwe Programme is: to contribute to enhanced enjoyment of constitutional rights in Zimbabwe, through legislation, policies, practices and decision-making being increasingly informed by international human rights standards and principles. Its main implementing partners at the time of writing are: Raoul Wallenberg Institute of Human Rights and Humanitarian Law (hereinafter ‘RWI’) at Lund University, Sweden; Centre for Applied Legal Research (hereinafter ‘CALR’) in Harare, Zimbabwe; College of Business, Peace, Leadership and Governance at Africa University in Mutare, Zimbabwe; Faculty of Law at Midlands State University in Gweru, Zimbabwe; Herbert Chitepo School of Law at Great Zimbabwe University in Masvingo, Zimbabwe; Faculty of Law at University of Zimbabwe in Harare, Zimbabwe; Faculty of Law at Ezekiel Guti University in Bindura, Zimbabwe; Council for Legal Education in Zimbabwe; Zimbabwe Human Rights Commission; Zimbabwe Prisons and Correctional Services; and Zimbabwe Anti-Corruption Commission. The Zimbabwe Programme is supported by the Embassy of Sweden in Zimbabwe.

The national symposium is an annual event under the Zimbabwe Programme. It is organised by RWI together with the academic partner institutions, and is a forum where research funded and conducted during the year is packaged and presented before an audience representing diverse sectors of Zimbabwean society, thereby allowing the presenters and participants to in plenary engage in vibrant discussions around the topics at hand and together deliberate on the way forward with regard to critical human rights reform issues. The feedback and experiences shared during the national symposium also aid and feed into the preparation of final papers for publication and dissemination.

MSU would like to extend heartfelt gratitude to the Embassy of Sweden in Zimbabwe for their support through RWI in making the publication of this special issue a reality. A lot of gratitude is extended to the academic partners and to all the researchers for their hard work and determination, which resulted in this special issue of the MSULR. This is a proud moment in the history of the MSULR and we wish stakeholders an exciting read!!!

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An assessment of sustainability reporting as a tool for promoting corporate accountability by selected mining companies in Zimbabwe

Mutuso Dhliwayo and Michelle N Chitando*

Abstract

Zimbabwean mining companies have been accused of failing to respect the human rights of the communities in which they operate. The increasing need for corporate accountability in high-risk sectors like mining and the growing sustainability discourse have seen sustainability reporting gaining prominence. The objective of this article was to assess whether sustainability reporting, as it is conducted by Zimplats, Rio Zimbabwe and Unki mine, is a tool for promoting corporate accountability. To achieve this, the article provides a conceptual understating of corporate accountability and its relationship with sustainability reporting. It also looks at the legal developments at national, regional, and international levels related to the two concepts. Having set the background, the article proceeds to assess the sustainability reports published by Zimplats, Rio Zimbabwe and Unki. The assessment is based on five themes, which are governance and policy commitments, respect for human rights and conducting due diligence, grievance redress mechanism, and access to remedies and practices to prevent human rights impacts responses to allegations of serious negative impacts on human rights. The article concludes that the current framework of sustainability reporting falls short of making it an effective tool for corporate accountability, and it proffers policy, institutional and implementation recommendations for the government and other stakeholders.

1. Introduction

On the sustainability front, the world faces triple planetary threats in the form of biodiversity loss, climate change and pollution.¹ These triple planetary threats are affecting the achievement of sustainable development in general and Sustainable Development Goals (SDGs) in particular. Despite its immense role in contributing towards economic development, the mining sector can undermine the achievement of sustainable development and SDGs if its activities are not carried out responsibly or sustainably.² This has led to the development of concepts of sustainability reporting, corporate responsibility and corporate accountability as legal, voluntary and soft law mechanisms that may be used to ensure that the private sector conducts its activities in a manner that respects human rights and the environment. The objective of this article is to assess the extent to which sustainability reporting may be a tool for promoting

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¹ Stockholm + 50 International Meeting Concept, 2022. A Healthy Planet for the Prosperity of All – Our Responsibility, Our Opportunity.

² International Council on Mining and Metals, 2022. Strategy and Action Plan, p.3.

corporate accountability by selected mining companies in Zimbabwe. This entails looking at the legal and policy regime for sustainability reporting in Zimbabwe and determining whether it promotes corporate accountability in Zimbabwe's mining sector. Mining is a critical economic sector in Zimbabwe. Its importance is reflected in several policy documents. These include Vision 2030³, the USD 12 billion mining economy by 2023 Strategy⁴ and the National Development Strategy 1.⁵

In meeting its objective, the article will provide a conceptual understating and definition of sustainability reporting and corporate accountability and the major drivers behind these concepts at the national and global levels. It also looks at the importance of sustainability reporting and its role in promoting corporate accountability and its benefits, based on the United Nations Guiding Principles on Business and Human Rightsamong other frameworks. At the national level, it will be based on the Mines and Minerals Act, the Mines and Minerals Amendment Bill, the Companies and Other Businesses Entities Act, the Environmental Management Act, the Zimbabwe Investment and Development Agency Act⁶ and the Securities and Exchange (Zimbabwe Stock Exchange Listings Requirements) Rules 2019.⁷ Furthermore, it also looks at the guiding principles for sustainability reporting and some of the existing sustainability reporting frameworks. Based on the identified guiding principles, the paper will assess the Sustainability Reports of three mining companies listed on the Zimbabwe, Johannesburg and London Stock Exchanges. These are RIO ZIM, which is listed on the Zimbabwe Stock Exchange; ZIMPLATS, which is listed on the Johannesburg Stock Exchange; and UNKI, listed on the London Stock Exchange. The paper will conclude by making recommendations on how sustainability reporting may promote corporate accountability and how sustainability reporting in Zimbabwe's mining sector can be strengthened.

2. Context Setting: Why corporate accountability and sustainability reporting matter for the Zimbabwean mining sector

As a mineral-producing country, the discourse on sustainability reporting in Zimbabwe, how it may promote corporate accountability on human rights and what possible mandatory reporting

³ Government of Zimbabwe, 2018. Towards an Upper Middle Income Economy by 2030.

⁴ Government of Zimbabwe, 2019. USD 12 Billion Mining Economy by 2023 Strategy.

⁵ Government of Zimbabwe, 2020. Towards a Prosperous and Empowered Upper Middle Income Society by 2030. National Development Strategy 1 (January 2021 – December 2025).

⁶ Chapter 14:37.

⁷ Statutory Instrument 134 of 2019.

regulations should look like, is important. Endowed with vast mineral deposits, Zimbabwe is at the beginning of the mineral supply chain, which is critical for responsible mineral supply chains and responsible sourcing. Interested parties, particularly communities impacted by mining activities, Civil Society organisations (CSOs) and investors, are dissatisfied with the impact of mining corporations on the human rights of communities and how these companies report on the impact of their activities. The lack of a rigorous framework prescribing the amount and type of environmental, social and governance (ESG) information to be disclosed in annual reports has prompted certain mining companies to disclose positive business results and omit negative reports. This is commonly known as greenwashing. While the value of mining in achieving economic growth for Zimbabwe cannot be denied, mineral extraction has also been linked to serious human rights violations. These include environmental degradation and numerous social ills for the communities that host the minerals, which raise concerns about the sustainability of the mining practices in the country.⁸ Classic examples include the mining of diamonds in the Manicaland region of Zimbabwe, which led to the displacement of communities, relocations of communities from Chiadzwa to Arda Transau,⁹ low wage short-term contracts as well as long working hours,¹⁰ and poor occupational, health and safety issues.¹¹ All these issues only come to the fore due to active media reporting, Civil Society Organisations (CSOs), community unrest and research by independent stakeholders. It is, therefore, imperative to assess whether the current practice of Zimbabwean companies on sustainability reporting can be a tool that can be utilised to address these mining-associated challenges.

3. Methodology

Based on considerations regarding the scale of assessment, the problem statement, research design, doctrinal methodology and access to corporate executives and other key stakeholders,

⁸ Economic impact of world mining G. Walser World Bank Group Mining Department, Washington, D.C., United States of America p. 86.

⁹ See <https://allafrica.com/stories/202107260295.html>. See also a case study on community land rights protections, <https://namati.org/news-stories/zelacasestudy/> visited on 10 December 2023. Approximately 4,321 people were relocated to pave the way for diamond mining by companies to conduct their activities, including Mbada Diamonds, Diamond Mining Corporation, Canadile, Anjin, Jinan, Rera Diamonds and Marange Resources.

¹⁰ J Taborara and D Chidarara, *From Mountains of Hope to Anthills of Despair, Assessment of human rights risks in the extraction and production of natural stone in Zimbabwe*, (2021) p. 32.

¹¹ Ministry of Mines and Mining Development, *Report of the Auditor-General on the Management of Occupational Health and Safety in Mining Operations*, see www.veritaszim.net/sites/veritas_d/files, visited on 8 November 2023.

the paper was essentially desk-based. The paper adopted descriptive and exploratory approaches in analysing the issue at hand.¹² The descriptive approach assisted the researchers in understanding the meaning and history of corporate accountability and sustainability reporting and their role in protecting the human rights of mining-affected communities. It is an approach that also allowed the researchers to conduct an analysis of the relevant legal and doctrinal history and existing sources. These sources include national legislation, international treaties, and instruments. The approach was also instrumental in understanding the legal concepts and principles that have been developed at national, regional and international levels by both state and non-state actors to govern corporate accountability and sustainability reporting. Additionally, the research adopted an exploratory approach in proposing guiding principles that may be used as an analytical framework for sustainability reports for selected companies operating within Zimbabwe's mining sector. The research focuses on listed companies, since the current regulatory framework only sets the reporting obligation upon them. The paper is not intended to be exhaustive research on all issues related to corporate accountability and sustainability reporting in Zimbabwe's mining sector but to provide initial research insights which can be a basis for future research.

4. Understanding Corporate Accountability

Over the years, the notion of corporate accountability has gained much traction in the national, regional and international arena. To understand whether sustainability reporting is a mechanism that may promote corporate accountability, it is critical to give an overview of corporate accountability and what it entails. Corporate accountability for human rights arises from the accepted concept that corporations have a duty to respect human rights, as laid out in Pillar 2 of the United Nations Guiding Principles on Business and Human Rights (UNGPS). Corporate respect for human rights is about the responsibility that companies must not infringe on the human rights of others and to address any adverse human rights impacts they find themselves involved in.¹³ One of the ways through which the corporate responsibility to respect human rights is demonstrated is through policy commitment.¹⁴ Business enterprises are called on to show or express their commitment to meet the corporate responsibility to respect human rights

¹² D Hunter, J McCallum, J. and D Howes. "Defining Exploratory-Descriptive Qualitative (EDQ) research and considering its application to healthcare"(2019) *Journal of Nursing and Health Care*, 4 (1).

¹³ United Nations Human Rights Office of the High Commissioner, 2011. Guiding Principles on Business and Human Rights . Implementing the United Nations Protect, Respect and Remedy Framework, p.13.

¹⁴ United Nations Human Rights Office of the High Commissioner, *supra* p.16.

through a policy statement. The term statement of policy is defined broadly to mean “whatever means an enterprise employs to set out publicly its responsibilities, commitments and expectations”.¹⁵ At the heart of the policy commitment is the communication of the business activities to stakeholders in various forms and making sure that the communication is publicly available. In addition to the UNGPs, this corporate responsibility for human rights has been reflected in national-level constitutions¹⁶ and legislations¹⁷ and voluntary mechanisms and certification schemes like the Initiative for Responsible Mining Assurance.¹⁸

The respect for human rights by corporations has gained unprecedented acceptance in the past decade by relevant stakeholders, including the international legal community, governments and corporations.¹⁹ The direct and indirect impacts of corporations, mining companies included, along with their value/supply chains, have been generally accepted and considered to be relevant to the economic, social, and environmental aspects of corporate activities.²⁰ While the issue of responsibility for human rights in the conduct of business has been accepted, governments, corporations, civil society organisations, and communities are not in agreement on how this responsibility should be discharged. There are contestations among stakeholders on the extent and level at which corporations should be regulated to ensure sustainable global supply chains (including mineral supply chains).²¹ Given the increasing power that mining companies wield and the limitations of legal frameworks to regulate the transnational business landscape, it has been difficult for most mining-affected communities to hold corporations to account. It is for this reason that the potential for sustainability reporting as a mechanism for transparency and accountability has gained much traction.

¹⁵ Supra.

¹⁶ Section 44 of the Zimbabwean Constitution for example, provides for the State, every person (including juristic persons) and all institutions and government agencies to respect, protect, promote and fulfil the rights and freedoms set out in the Bill of Rights.

¹⁷ See Mandatory due diligence laws in France, Germany, and the proposed European Union due diligence directive.

¹⁸ See <https://responsiblemining.net/> visited on 9 December 2023.

¹⁹ U.N. Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, 2011 and C. Ghogassian, ‘Evading the transparency tragedy: the legal enforcement of corporate sustainability reporting’ 11:2 *Hastings Business Law Journal*, (2015) pp.361-384.

²⁰ Australian Human Rights Commission, ‘Corporate Social Responsibility & Human Rights,’ <http://www.humanrights.gov.au/publications/corporate-social-responsibility-human-rights> visited on 10 December 2023.

²¹ See Feasley note 1.

5. Understanding Sustainability Reporting

Sustainability reporting has been defined as the “disclosure of information concerning a company’s significant economic, social, environmental and governance impacts and performance.”²² It is a keyway of assuming corporate responsibility and demonstrating a company’s long-term economic value. It has also been defined as a process where corporations disclose their activities’ environmental, social, governance and economic impacts. From these definitions, the main objective of sustainability reporting is to disclose information about a company’s activities and their impacts from an economic, social, environmental and governance perspective to stakeholders. This information is used by the various stakeholders depending on their informational needs. Others have opined that the concept of sustainability reporting is today reflected in the phenomenon of Environmental, Social and Governance (ESG) frameworks.²³

The history of sustainability reporting may be traced to the United Nations Conference on Environment and Development.²⁴ While the concept of sustainable development may be traced to the United Conference on the Human Environment, also known as the Stockholm Declaration, it was at the United Nations Conference on Environment and Development (UNCED) that the concept was concretised.²⁵ It was at this conference that environmental reporting by corporations and public dialogue was recognized as being among the highest corporate priorities and as key determinants for sustainable development.²⁶ This could be viewed as the birth or laying of the foundation for the concept of sustainability reporting. Subsequent UN conferences on environment and development were able to build on this. These include the World Summit on Sustainable Development that was held in Johannesburg, South Africa in 2002 and the Rio + 20 conference held in 2012. For example, the Rio + 20 Outcome Document notes ‘the role of corporate sustainability reporting in enhancing the private sector’s

²² Anderson K, “What is sustainability reporting and why is it important?” Greenly. <https://greenly.earth/en-gb/blog/company-guide/what-is-sustainability-reporting-and-why-is-it-important> Accessed on 10 December 2023.

²³ United Nations Environment Programme, ‘Frequently Asked Questions on Corporate Sustainability Reporting. Tackling the big questions around the global corporate sustainability reporting agenda’, 2013, <https://wedocs.unep.org/20.500.11822/26171>, visited on 10 December 2023.

²⁴ This was held in 1972 in Stockholm in Sweden, resulting in the Stockholm Declaration on the Human Environment. In 2022, the world held the Stockholm +50 International Meeting to commemorate 50 years after the Stockholm Declaration.

²⁵ The United Nations Conference on Environment and Development, also known as the Rio Earth Declaration, was held in 1992 in Rio de Janeiro, Brazil.

²⁶ United Nations Environment Programme note 30, p.7.

contribution to sustainable development and calls on companies to consider integrating sustainability information into their existing reporting practices.”²⁷

The framing of sustainability and corporate conduct may be traced to 1994 when the “Triple Bottom Line” framework was conceived by Elkington. This business concept provided that corporations should measure their social and environmental impact in addition to measuring financial performance. The adoption of this framework and growth of the sustainability and corporate responsibility agenda developed into the acceptance that the disclosure of a broad set of measures of social, environmental, and economic impacts, benefits companies and their stakeholders. This resulted in voluntary sustainability reporting focusing on environmental, societal and economic impacts. It is worth noting that when sustainability reporting initially emerged, it was voluntary, and various companies adopted diverse formats for it.²⁸ As more corporations began to publish sustainability reports, a need for a standardised framework and guidelines against which companies could report arose. Among these, the Global Reporting Initiative (GRI) sustainability reporting standard became the most widely utilised standard for sustainability reporting. The growing practice did not significantly impact responsible business conduct because of the voluntary nature of GRI and sustainability reporting. Companies that chose whether to report had significant discretion about the scope and substance of what they reported and were not subject to legal consequences for failing to report or misreporting their activities.

6. Sustainability Reporting Governing Frameworks

6.1 Voluntary Frameworks

There are several voluntary sustainability or ESG reporting frameworks in existence. The GRI has emerged as the most trusted reporting framework, with Governments, CSOs and companies relying on the framework for sustainability reporting.²⁹ According to its documents, GRI aims to provide a standard, high-quality framework for businesses to use and adapt for reporting on their most “critical impacts- positive or negative on the environment, society and the

²⁷ United Nations Environmental Programme, 2013 note 30, p.7.

²⁸ M.Tamvada, ‘Corporate Social Responsibility and Accountability: A new theoretical foundation for regulating CSR’, *International Journal of Corporate Social Responsibility*, p.3.

²⁹ Global Reporting Initiative, ‘GRI: empowering sustainable decisions, our five-year focus 2015-2020’ <<https://www.globalreporting.org/media/zrjmyuzg/gri-annual-report-2015-2016.pdf>> visited 10 December 2023.

economy.”³⁰ The framework includes “general standard disclosures” for all businesses and “specific standard disclosures” based on the industry and social and environmental risks and opportunities in that particular industry.³¹

The GRI standard has undergone some changes over the last few years. This article focuses on the changes that were made to reflect the UNGPs and other business and human rights documents like the OECD Guidelines. The changes in the new universal standard adopted on the 5th of October 2021 are critical. Some of the key changes in the guidance were on the definition of human rights, which is in line with international human rights instruments such as the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work.³² This new definition gives companies reporting under the GRI more clarity on the minimum standard and scope of human rights that they must consider for reporting and in their operations. Further, the update was also reported to have been put in place to

“...have integrated transparency on human rights at the heart of sustainability reporting. This helps any organisation using the GRI Standards to adhere to the UN Guiding Principles on Business & Human Rights as well as emerging mandatory human rights and environmental due diligence legislation.”³³

For other stakeholders, the acknowledgement of the need for sustainability reports to increase corporate transparency and, ultimately, accountability, is important. According to Judy Kuszewski, Chair of GRI’s Independent Global Sustainability Standard’s Board, this is something that the update seeks to address and for that reason,

“...the revised Universal Standards set a new global benchmark for corporate transparency. Fully addressing gaps between the available disclosure frameworks and intergovernmental expectations for responsible business, including human rights reporting, they will enable more effective and comprehensive reporting than ever before.”³⁴

³⁰ H. Pauwels, *Human rights is at the heart of corporate transparency*, < www.globalreporting.org>, visited on 8 November 2023.

³¹ C.A. Williams, (2016), ‘Transnational Corporate Accountability, and Global Regulatory Counter-Currents’, *UC Irvine Journal of International, Transnational, and Comparative Law*, (2016) pp. 67-90 at p.1

³² Human rights is at the heart of corporate transparency Published date: 05 May 2022 <https://www.globalreporting.org/news/news-center/human-rights-is-at-the-heart-of-corporate-transparency/>

³³ H. Pauwels, *Human rights is at the heart of corporate transparency*, 5 May 2022, <www.globalreporting.org/news>, visited on 8 November 2023.

³⁴ S. Eastwood et al, *Business and Human Rights: Revised GRI Standards Integrate UN Guiding Principles on Business and Human Rights and Foreshadow Emerging Mandatory Human Rights and Environmental Due Diligence Legislation*, <www.mondaq.com/unitedstates/corporate-governance>, visited on 8 November 2023.

Despite the updates and years of GRI, there continued to be a gap between sustainability reporting and responsible corporate practice in high-risk sectors like the mining sector. It is because of the disconnect between sustainability reporting and the practice of companies, coupled with the changing landscape of business and human rights, that a wave of regulated and mandatory sustainability reporting arose.

6.2 Mandatory or Regulatory Sustainability Reporting

A wave of regulated and mandatory sustainability reporting arose because of the disconnect between the regional frameworks of the European Union parties coupled with the changing landscape of business and human rights. The mandatory frameworks have emerged in the regional frameworks of the European Union and national frameworks in individual countries such as the United States and regulation through stock exchanges. For instance, in 2014, the European Union introduced Directive 2014/95/EU, “Non-Financial Reporting Directive” to regulate the report of non-financial information (environmental and social) by approximately 11,700 large public interest companies with more than 500 employees.³⁵ The Directive went beyond the EU Accounts Modernization Directive that has, since 2003, provided for reporting beyond the financial aspects but required companies “to the extent necessary” to provide investors with an accurate view of the company’s financial position and the risks to that position by reporting on non-financial matters.³⁶ The Directive, which has been replaced with the Corporate Sustainability Reporting Directive (CSRD),³⁷ was intended to deal with the lack of a standardised format and transparency of sustainability reports.³⁸ It went further to provide for reporting on environmental matters, social matters and the treatment of employees, respect for human rights, anti-corruption and bribery, and diversity on company boards (in terms of age, gender, educational and professional background).³⁹ The challenge with this directive is that it did not cover a broad range of companies, which the CSRD sought to address. The CSRD modernises and strengthens the rules concerning the social and environmental information that

³⁵ C.A. Williams. ‘The Global Reporting Initiative, Transnational Corporate Accountability, and Global Regulatory Counter-Currents’, *UC Irvine Journal of International, Transnational, and Comparative Law* (2016) pp 1. 67-90.

³⁶ Directive 2003/51/EC and Williams note 43.

³⁷ European Union Report, *New rules on corporate sustainability reporting: The Corporate Sustainability Reporting Directive*, <[www.sgs.com/en/news/2023/03/safeguards-3423-eu-publishes-corporate-sustainabilityreportingdirective#:~:text=It%20took%20effect%20on%20January,and%20governance%20\(ESG\)%20disclosures.](http://www.sgs.com/en/news/2023/03/safeguards-3423-eu-publishes-corporate-sustainabilityreportingdirective#:~:text=It%20took%20effect%20on%20January,and%20governance%20(ESG)%20disclosures.)>, visited on 8 November 23.

³⁸ Williams note 43.

³⁹ European Commission Report, *Corporate sustainability reporting*, <finance.ec.europa.eu/capital-markets>, visited on 8 November 2023.

companies have to report, as well as broadens the category of companies to report to include other listed large companies and Small and Medium Enterprises (SMEs). It also provides for a new European Sustainability Reporting Standards (ESRS) that all reporting companies will be required to use.⁴⁰ These instruments mention that companies are mandated to report on their impacts on people and the planet in categorising the social and environmental reporting requirements, respectively. It is critical to note that some of the mining corporations operating in Zimbabwe are domiciled in the European Union, and thus, it is important to have a look at how they are regulated.

6.3 Sustainability reporting on the stock markets

In the past, stock markets were crucial to the expansion and development of the economy. However, the increasing need for disclosure of relevant environmental, social and governance information has seen the evolution of stock markets as ‘sustainability change agents.’⁴¹ In the absence of a harmonised sustainability reporting framework, companies tend to omit important subjects in favour of providing disclosures that are simple to furnish or make them appear good. Most sustainability reports offer a variety of themes and content and lack standardised templates. As such, companies’ disclosure transparency varies greatly and the existing reporting practices do not benefit local communities. As a result, there is continued violation of human rights by the operation of businesses, i.e. mining companies in Zimbabwe.

6.3.1 London Stock Exchange

The UK’s sustainability reporting environment combines voluntary and mandatory regulation. The voluntary regulation is mainly comprised of industry and certification scheme reporting. However, different departments of the UK government have regulations and or policies that regulate sustainability reporting in the country. For instance, the Companies Act 2006 (Strategic Report and Directors’ Reports) Regulations of 2013) mandates quoted companies to report information on greenhouse gas (GHG) emissions in their Directors’ Reports.⁴² Quoted companies are also required to report on the impact of their companies’ activities on the environment to the extent that is necessary for an understanding of the company’s business

⁴⁰ European Commission Report note 47.

⁴¹ United Nations Environmental Programme Report, *Stock Exchanges and Sustainability*, 15/13 December 2015, <wedocs.unep.org/bitstream/handle/>, visited on 8 November 2023.

⁴² A quoted company is defined in section 385 (2) of the Companies Act 2006 as a company that is UK incorporated and whose equity share capital is listed on the Main Market of the London Stock Exchange UK or in an European Economic Area (EEA) State, or admitted to trading on the New York Stock Exchange or Nasdaq.

within their Annual Report under the strategic report section.⁴³ Also, the Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018 mandates quoted and large unquoted companies⁴⁴ to conduct streamlined energy and carbon reporting (SECR). This sustainability report is intended to measure a company's carbon footprint, energy efficiency and measures being put into place by the company (including quoted and large mining companies) to combat climate change impacts.⁴⁵ In addition, the UK Financial Conduct Authority (FCA) requires companies with UK-listed shares or deposit receipts, FCA-regulated asset managers and asset owners to complete mandatory annual Task Force for Climate-Related Financial Disclosure (TCFD) -aligned climate disclosure reporting.⁴⁶ This is a framework that the government has accepted as an effective way for reporting organisations to analyse, understand, and ultimately disclose climate-related financial information to inform action.⁴⁷ Finally, it is worth noting that the UK government is currently developing sustainability disclosure standards (SDS) to set out consolidated corporate disclosures on the sustainability risks and opportunities that corporations face. The standards are intended to inform any future regulation of sustainability reporting.⁴⁸ It is important to note that sustainability reporting in the UK still frames business risk as opposed to the human rights angle.

6.3.2 Australian Securities Exchange Initiatives

According to listing rule 4.10.3⁴⁹, Australian listed entities must include a corporate governance statement in their annual report and must also disclose, "if not, why not," how closely the statement complies with the ASX Corporate Governance Council's recommendations. The Corporate Governance Principles and Recommendations, Fourth Edition, was published in February 2019. Among other things, it strengthens Recommendation

⁴³ D. Smith and J. Wentworth, *Mining and the sustainability of metals*, 2 February 2022 <<https://post.parliament.uk/research-briefings/post-pb-0045/>>, visited on 8 November 2023.

⁴⁴ Large companies are defined in sections 465 and 466 of the UK Companies Act 2006 as turnover (or gross income) of £36 million or more, balance sheet assets of £18 million or more and 250 employees or more.

⁴⁵ United Kingdom Government, *Guidance Streamlined Energy and Carbon Reporting (SECR) for academy trusts*, 20 September 2023, <www.gov.uk/government/publications>, visited on 8 November 2023.

⁴⁶ Brightest, *Task Force on Climate-Related Financial Disclosure (TCFD)*, 14 July 2023, <www.brightest.io/tcfd-climate-reporting-requirements>, visited on 8 November 2023.

⁴⁷ United Kingdom Government Report, *Guidance Task Force on Climate-related Financial Disclosure (TCFD) aligned disclosure application guidance*, 20 July 2023, <www.gov.uk/government/publications>, visited on 8 November 2023.

⁴⁸ United Kingdom Government Report, *UK Sustainability Disclosure Standards*, 2 August 2023, <www.gov.uk/guidance/uk-sustainability-disclosure-standards>, visited on 8 November 2023.

⁴⁹ United Kingdom Government Report note 56.

7.4 on disclosing exposure to and dealing with significant environmental and social risks. A detailed explanation of the dangers associated with climate change is also provided, and the Council encourages organisations to evaluate their exposure in light of the Task Force on Climate-Related Financial Disclosure (TCFD).

6.3.3 Johannesburg Stock Exchange

The Johannesburg Stock Exchange provides Disclosure Guidelines that assist listed companies to report on sustainability issues. The aim is to drive improved ESG performance and accountability and contribute to enhanced transparency.

The table below shows the recommended metrics and disclosures for sustainability reporting by the Johannesburg Stock Exchange.⁵⁰

Table 1- Summary of metrics and disclosures on the Johannesburg Stock Exchange

CATEGORIES	ISSUES COVERED
1. Environmental	<ul style="list-style-type: none"> • Water Use • Supply Chain and Materials • Climate Change • Pollution and Waste
2. Social	<ul style="list-style-type: none"> • Human Rights and Community Development • Labour Standards • Supply Chains • Health and Safety Issues • Customer Responsibility
3. Governance	<ul style="list-style-type: none"> • Tax/fiscal transparency • Risk management and compliance • Ethical Behaviour • Corporate Governance

7. The Legal Frameworks for Promoting Sustainability Reporting in Zimbabwe

Zimbabwe has several laws and regulations that have implications for Sustainability Reporting and Corporate Accountability.

⁵⁰ JSE Group, *JSE Sustainability Disclosure Guidance - Sustainability Narrative Disclosures and Metrics*, <www.jse.co.za/sites/default/files/media/documents>, visited on 8 November 2023.

7.1 The Zimbabwean Stock Exchange Sustainability Reporting Framework

Prior to the promulgation of Securities and Exchange (Zimbabwe Stock Exchange Listings Requirements) Rules 2019⁵¹, sustainability reporting in Zimbabwe was primarily voluntary and had no standard format. When the Zimbabwe Stock Exchange Listings Requirements were promulgated, it made sustainability reporting mandatory for all listed companies on the Zimbabwe Stock Exchange (ZSE) and Victoria Falls Stock Exchange (VFEX). The Zimbabwe Stock Exchange Listings Requirements clearly state that sustainability information must be disclosed, clearly outlining its relevance to the organisation and the organisational strategy for addressing various sustainability issues.⁵² In this disclosure, it is mandatory to divulge the organisation's sustainability policy which delineates the mitigation risks taken by the organisation, data on its sustainability performance and any other necessary information that will aid different stakeholders who utilise this report to understand the organisation's corporate performance.⁵³ It is important to note that this information should be presented in a balanced manner, highlighting both adverse and positive impacts on the society and the environment. In terms of the statutory instrument, organisations are encouraged to utilise the latest internationally accepted reporting frameworks when compiling their sustainability reports to ensure that sustainability performance is clearly reported.

The Statutory Instrument (SI) 134 also takes cognisance of organisations that operate in industries that are extremely sensitive to environmental and social issues such, as oil and gas, mining and metals sectors which have high environmental and social exposure and impacts and warrant specialised reporting frameworks for meaningful assessments of the organisational risk and performance.⁵⁴ Such companies are required to— (a) adopt an industry-specific reporting framework, (b) the GRI Sector Supplements for selected industries, or (c) such internationally and nationally recognised reporting frameworks.⁵⁵ The sustainability reports may be in the form of an annual report that provides a complete presentation combining or integrating financial and non-financial disclosures, such as environmental and social issues reflective of

⁵¹ Statutory Instrument 134 of 2019.

⁵² Statutory Instrument 134 of 2019, *supra* note 58, sections 399-404 for companies listed on the Zimbabwe Stock Exchange and sections 398-403 for companies that are listed on the Victoria Falls Stock Exchange.

⁵³ Statutory Instrument 134 of 2019, *supra* note 58, section 400 (b).

⁵⁴ Statutory Instrument 134 of 2019, *supra* note 58, section 402.

⁵⁵ Statutory Instrument 134 of 2019, *supra* note 58, section 402 (c).

the company's corporate practices.⁵⁶ If the organisation decides to utilise an integration framework, it must highlight both the standards and frameworks used. Where a company adopts the Integrated Reporting Framework, a standalone sustainability report providing a comprehensive disclosure of environmental and social issues should be referenced in any reporting of annual financial statements by providing a summary of sustainability information linked to the standalone report. Alternatively, all sustainability information should be referenced to a standalone comprehensive sustainability report prepared separately and made available to stakeholders.⁵⁷

7.2 Zimbabwe Investment and Development Agency Act

The Zimbabwe Investment and Development Agency Act [Chapter 14: 37] is a key investment promotion and protection legislation which may be used to promote sustainability reporting. Its objective is to provide for the promotion, entry, protection, and facilitation of investment. The functions include the improvement of the investment climate for domestic and foreign investment.⁵⁸ Listing on the Zimbabwe Stock Exchange and other stock exchanges as a precondition, may be used to promote and protect responsible investors. SR is one of the key indicators that a company is committed to promoting sustainable development and the achievement of SDGs.

7.3 Environmental Management Act

The Environmental Management Act [Chapter 20:27] is a key piece of legislation that is anchored on sustainable development, a key objective of SR. The Act requires the carrying out of an Environmental Impact Assessment (EIA) for certain projects.⁵⁹ Mining is one of the activities that require an EIA.⁶⁰ The EIA is followed by an Environmental Impact Assessment Report (EIAR). Section 99 of the EMA lists the contents of an EIAR as follows:

- “give a detailed description of the project and the activities to be undertaken in implementing it;
- state the reasons for selecting the proposed site of the project;

⁵⁶ Statutory Instrument 134 of 2019, supra note 58, section 403 (1) (a).

⁵⁷ Statutory Instrument 134 of 2019, supra note 58, Section 403 (1) (c).

⁵⁸ Section 4 (1) (g) of the Zimbabwe Investment and Development Agency Act, Chapter 14:37.

⁵⁹ Sections 97 -108 of the Environmental Management Act, Chapter 20:27.

⁶⁰ First Schedule of the Environmental Management Act.

- give a detailed description of the likely impact the project may have on the environment or any segment thereof covering the direct, indirect, cumulative, and short-term effects of the project; and
- specify the measures proposed for limiting, reducing or mitigating anticipated adverse effects the project may have on the environment;
- identify ways of monitoring and managing the environmental effects of the project;
- indicate whether the environment of any other country is likely to be affected by the project and any measures to be taken to minimise any damage to the environment;
- where applicable, indicate how the developer proposes to integrate biological diversity in the project; and
- concisely describe the methodology the developer used to compile the environmental impact assessment report.”⁶¹

The contents of the EIAR are very much aligned with the contents and requirements of SR. Apart from the Securities and Exchange (Zimbabwe Stock Exchange Listings Requirements) Rules 2019, this is the closest that Zimbabwe comes to legislating for SR. The ongoing reforms of the Environmental Management Act through the Environmental Management Act Amendment Bill⁶² is an opportunity to further strengthen SR.

7.4 Companies and Other Business Entities Act

The Companies and Other Business Entities Act [Chapter 24: 03] is another piece of legislation that can potentially have implications for SR. Its objective is to provide for companies' constitution, registration, management, and internal administration. The Act covers companies and businesses that include those in the mining sector and covers a very important component of transparency and accountability, namely beneficial ownership.⁶³ However, despite its potential, the Act does not currently provide for SR.

7.5 Mines and Minerals Act and the Mines and Minerals Amendment Bill

⁶¹ Section 99 (a) - (g) of the Environmental Management Act.

⁶² Environmental Management Amendment Bill, 2021.

⁶³ See sections 51, 62, 69, 72 and 73 of the Act.

The mining sector is a prime candidate for sustainability reporting because of its dramatic and visible impacts on human rights.⁶⁴ Environmental, Economic, Social and Cultural Rights (EESCR) are among the rights that are mostly affected by the mining sector. One would expect sustainability reporting featuring prominently in legislation regulating the mining sector. The Mines and Minerals Act [Chapter 21:05] is the main piece of legislation that governs the mining sector in Zimbabwe. However, a review of the Act shows that there are no provisions for sustainability reporting. The lack of provisions on sustainability reporting is not surprising when one considers that the law was enacted during the colonial era before sustainability issues were featured prominently.

The ongoing legal reforms of the Mines and Minerals Act through the Mines and Minerals Amendment Bill offer a great opportunity to include sustainability reporting. Sustainability Reporting is now prominently featured on the national, regional, and global agenda. A review of the Mines and Minerals Amendment Bill shows no provisions for sustainability reporting, which is surprising given its prominence in national, regional and international discourses on sustainable development and the achievement of SDGs. However, there is a silver lining in that the Mines and Minerals Amendment Bill lapsed with the end of the 9th Parliament. There is therefore an opportunity to advocate for the inclusion of SR in the reform of the Mines and Minerals Act through the Mines and Minerals Amendment Bill which is one of the Bills before the 10th Parliament's legislative agenda. Hopefully, stakeholders like CSOs and CBOs will capitalise on this opportunity to ensure that there are provisions on SR in the Bill.

8. The relationship between sustainability reporting and corporate accountability

There is a strong correlation between sustainability reporting and corporate accountability. Sustainability reporting has been touted as one of the critical requirements to hold mining companies accountable for their human rights impacts.⁶⁵ Sustainability reporting (if done correctly) may provide state reporting (the necessary information needed to hold mining companies to account. Sustainability reporting does not only work in providing information to

⁶⁴ Zimbabwe Environmental Law Association, 'Zimbabwe National Report on the State of Business and Human Rights in the Mining Sector: Case of Mutoko and Zvishavane' https://books.google.co.uk/books/about/Zimbabwe_National_Report_on_the_State_of.html?id=KnTQwQEACAAJ&redir_esc=y visited on 5 October 2023.

⁶⁵ D.Hess, 'Combating Corruption through Corporate Transparency: Using Enforcement Discretion to Improve Disclosure', *Minnesota Journal of International Law* (2012).

relevant stakeholders or in corporate transparency, but it may also potentially be an essential instrument that enables a company to go through a self-assessment to understand the impacts of their decisions and operations on human rights and the environment.⁶⁶ It contributes to internal awareness and understanding of possible negative human rights impacts, as well as the means to prevent them and escalate the areas of strength.⁶⁷ Therefore, by addressing the negative human rights impacts arising from mining activities, sustainability reporting creates an effective mechanism that may change business practices and assist stakeholders, including mining-affected communities, in corporate accountability.

Since the adoption of the UNGPs, corporate respect for human rights has become an expected standard of conduct for businesses and corporate accountability is an integral aspect of responsibility. Companies are now required to conduct the human rights due diligence (HRDD). HRDD is a key concept of the UNGPs because to discharge the corporate responsibility to respect human rights requires due diligence “... which describes the steps a company must take to become aware of, prevent and address adverse human rights impacts”.⁶⁸ However, despite the requirement for companies to report and share information with stakeholders at every stage of the human rights due diligence process, the lack of corporate transparency on companies’ efforts, progress, outcomes and challenges has been a weak point. This has created difficulties for stakeholders including mining-affected communities, non-governmental organisations, and states, among others, to assess corporate activity and ensure access to remedy where there have been violations. For this reason, sustainability reports have been scrutinised as they present an opportunity for corporate transparency on HRDD, which ultimately leads to corporate accountability.

While sustainability reporting standards have improved (like the updated GRI and mandatory requirements in countries mentioned in the preceding sections), it must be noted that certain principles/benchmarks need to be in place for it to be an effective tool for corporate accountability in the mining sector. It must be emphasised that whilst reporting is crucial for

⁶⁶ C. Ferracioli and J. Parkhomenko, ‘Addressing Human Rights Impacts in Sustainability Reporting’, in I. Bantekas and M. Stein (eds.), *The Cambridge Companion to Business and Human Rights Law* (Cambridge University Press, Cambridge, 2021) pp. 502-530.

⁶⁷ C. Ferracioli and J. Parkhomenko, J note 74 p. 510.

⁶⁸ Human Rights Council, ‘Protect, Respect and Remedy: A Framework for Business and Human Rights’ (Framework) A/HRC/8/5 (7 April 2008), para 56 and Principle 15.

effective corporate accountability, mining companies must act responsibly and do what they report.⁶⁹ Moreover, the improvement in reporting standards represents only one aspect of sustainability. The mandatory sustainability reporting regulations must be complimented with the mandatory human rights responsibility of mining companies including human rights due diligence for sustainable reporting to be effective.⁷⁰ It is also important to note that the ability of stakeholders (mining-affected communities and civil society organisations included) to easily access, analyse and compare mining companies' sustainability reports is crucial for corporate accountability.⁷¹ This therefore takes into account the format that various companies use to develop sustainability reports, language and mode of presentation.

In addition to the above, the methodology developed by the Corporate Human Rights Benchmark (CHRB), part of the World Benchmarking Alliance (WBA), to assess human rights disclosures of companies may be critical in assessing the mining companies' sustainability reports vis-a-vis corporate accountability. The methodology looks at companies' policies, processes, and practices as well as responses to allegations.⁷² This methodology fits with the aim and what sustainability reporting practices seek to achieve. The methodology is composed of five measurement themes, namely:

- Measurement theme A: focuses on governance and policy commitments.
- Measurement theme B: focuses on embedding respect for human rights and conducting human rights due diligence.
- Measurement theme C: focuses on grievance mechanisms and access to remedy.
- Measurement theme D: focuses on specific practices to prevent human rights impacts in each industry.
- Measurement theme E: focuses on responses to allegations of serious negative impacts on human rights.

⁶⁹ E. Bon, *Focusing On BHR-ESG Includes Advancing Corporate Accountability*, <www.amerbon.com/blawg/focusing-on-bhr-esg>, visited on 8 November 2023.

⁷⁰ P.M Quick and C.Dobson *Bridging the Human Rights Gap in ESG*, <www.business-humanrights.org/en/blog/bridging-the-human-rights-gap-in-esg/>, visited on 8 November 2023.

⁷¹ G. Holly and S.K. Holmer. 'Sustainability Reporting and Human Rights: What can Big Data Analysis Tell us about Corporate Respect for Human Rights', <www.humanrights.dk/>, visited on 8 November 2023.

⁷² Corporate Human Rights Benchmark Methodology Extractives sector 2022 <https://assets.worldbenchmarkingalliance.org/app/uploads/2023/02/CHRBMethodology_170223_Extractives_FINAL.pdf> visited on 8 November 2023.

These measurement themes have indicators that are grounded in the UNGPs and other international human rights standards, with additional sector-specific requirements for the extractive industry (which includes the mining sector) applied to some indicators. This methodology as well as issues of accessibility, format, and presentation, will be utilised as a criterion to assess the sustainability reports for the selected mining companies in Zimbabwe in this research.

The corporate responsibility to respect human rights is based on internationally recognised human rights⁷³, hence the link between SR and the promotion of human rights. It also entails the carrying out of human rights due diligence by business enterprises. Human rights due diligence entails assessing actual and potential human rights impacts of the business enterprise, integrating and acting upon the findings, tracking responses, and *communicating* how impacts are addressed.⁷⁴

9. Analysis of sustainability reports of selected listed mining companies operating in Zimbabwe

This part of the paper analyses and discusses whether sustainability reports published by selected mining companies in Zimbabwe provide relevant data that may help curb human rights violations in mining-affected communities. To investigate the indicators and measures used for ESG reporting for selected listed mining companies operating in Zimbabwe, the research uses a purposive sample of 3 extractive companies. The research analyses the companies' annual reports as the most reliable documents as they are publicised and provide the necessary information on ESG.

It is usual for businesses to be concerned with reporting on profits and losses and overlook the environmental, social and governance issues. Mining corporations have so far only partially and superficially incorporated the SDGs into their sustainability strategy and reporting. However, in the contemporary context of the world, for increased accountability, it is now necessary to report sustainability issues so that various stakeholders (notably communities

⁷³ United Nations Human Rights Office of the High Commissioner, 2011. Guiding Principles on Business and Human Rights, principle 12, p. 13.

⁷⁴ United Nations Human Rights Office of the High Commissioner, *supra* p. 17.

affected by mining activities, and investors that increasingly value ESG factors) may have an increased understanding of the complete operations of the venture. The Global Reporting Initiative (GRI) developed universal standards that are aimed at promoting transparency in all aspects including contribution to the sustainable development of communities. Confusion among mining corporations and other stakeholders is a result of a lack of harmonisation of the sustainability reporting. The perception of the insufficiency of reporting efforts may also have been influenced by the absence of national regulations on sustainability reporting for the industry.⁷⁵ Various standards, including local regulatory requirements and third-party standards, are used by mining companies in sustainability reporting.⁷⁶

9.1 Zimplats

For Zimplats, mining rights of platinum resources in the Great Dyke were acquired in 1986. Zimplats focuses on the extraction of platinum and other platinum group of metals such as palladium, rhodium, iridium, ruthenium & osmium. The 2022 integrated annual report outlines that Zimplats achieves its strategic objectives through a structured and integrated risk management system. It identifies safety, health and environment (SHE) risks such as injury to personnel, effects on employee health and the loss of a social licence to operate as strategic risks. The report highlights a summary of stakeholder material issues, which include community interests such as social performance, employment, indigenisation, and empowerment. It details how Zimplats has responded through the rollout of growth projects that will present employment opportunities and how several projects aimed at enhancing community well-being will be implemented. The report shows the social performance expenditure from 2018 to 2022, which shows a rise over the five years. The report outlines how Zimplats has contributed to SDGs through the actions it has taken. For example, the report states that it has contributed to SDGs 6 and 4 on clean water and sanitation, and quality education. This was achieved by responding positively to a request from Denya Primary School whose ablution facilities had collapsed due to heavy rains and strong winds by constructing a new ablution block. Regarding environmental issues, the report outlines that Zimplats is environmentally compliant as it has several environmental licenses, including the

⁷⁵ United Nations Environmental Programme. *Sustainability Reporting in the Mining Sector: Current Status and Future Trends*, <<https://wedocs.unep.org/bitstream/handle/20.500/>>, accessed on 8 November 2023.

⁷⁶ G. Holly and S.K. Holmer. 'Sustainability Reporting and Human Rights: What may Big Data Analysis Tell us about Corporate Respect for Human Rights', <www.humanrights.dk/>, accessed on 8 November 2023.

Environmental Impacts Assessment (EIA), Effluent and waste disposal and water permits and agreements. To address energy management and climate concerns, the report highlights that Zimplats is investing in renewable and low-carbon energy solutions to improve the security of its electricity supply and reduce carbon emissions. Some initiatives on its decarbonisation strategy include obtaining an EIA for the 185MW solar plants project, which was submitted for approval in FY2022.

9.2 RioZim

The corporate website provides that RioZim was incorporated on August 29, 1956, as Rio Tinto Southern Rhodesia Ltd. RioZim separated from Rio Tinto plc in 2004 and became a wholly owned Zimbabwean company that produces gold, coal, toll refines nickel and copper. The company is listed on the Zimbabwe Stock Exchange (ZSE).⁷⁷ The mining company mines coal, gold, diamonds, and nickel. It operates in North-western Zimbabwe, Masvingo, Kadoma, and Southwest Zimbabwe.

In 2021, the mining company's annual report highlights that no fatalities were recorded across all the operations. However, there was retrogression in the number of lost time injuries, which increased from 5 in the prior year to 12. The report highlights that RioZim commissioned the Environmental and Social Impact Assessments for the solar farms to deal with environmental concerns such as climate change for its Dalny Mine and Cam & Motor Mine, which were approved during the reporting period. This was done to ensure that the projects were constructed and operated in an environmentally friendly manner. The report also highlights that RioZim closed the year with a total complement of 3180 compared to 2769 in 2020.

9.3 Unki

According to the corporate website of Anglo American, Unki Mine is part of Anglo American's platinum group of metal operations in the Great Dyke area in Zimbabwe. Unki Mine is the first mine in Zimbabwe to publicly commit to the Initiative for Responsible Mining Assurance (IRMA). As Unki Mine is a subsidiary of Anglo American, it is covered under the 2022 integrated annual report Anglo American. The report highlights that the mining entity has an Elimination of Fatalities Programme aimed at enhancing working in collaboration with its supply chain function to build an integrated Contractor Performance Management framework.

⁷⁷ Rio Zim, <<https://www.riozim.co.zw/>>visited on 8 November 2023.

This framework will support the implementation of a best practice approach to the engagement and management of contractor performance across business, including, environment, health and social performance functions. The report also indicates its 2023 goal to focus on implementing Anglo's strategy to deliver the vision of 'Always Safe' as it strives to improve its human-centric systems further, focused on end-user needs, making it easier for people to be safe. The report clearly states that the mining entity will drive the improvement of its controls by the timely deployment of enabling technologies and digitising its work to get real-time data to key decision-makers, allowing them to make informed operational safety decisions. To mitigate these impacts, it aims to create self-sustaining post-production ecosystems by embedding regenerative solutions into execution planning for its assets. The report specifically references human rights, stipulating that Anglo pays greater attention to due diligence across different functions amid continuously evolving legal, investor and stakeholder expectations related to respect for human rights. This is done through going beyond legal requirements to understand systemic human rights vulnerabilities in host communities and how the mining entity may help address them. It further mentions that it remains committed to obtaining and maintaining Free, Prior and Informed Consent (FPIC) for all relevant projects, in line with the 2013 ICM position Statement on Indigenous Peoples and Mining and International Finance Corporation (IFC) Performance Standard 7 (2012).

Anglo goes on to state in the report that with strengthened governance in place, the entity may proactively identify instances where its long-term life of asset plans may cause future displacement and resettlement. For instance, the identification of a potential pipeline of land access needs, integrated into long-term mine planning, creates an opportunity to change technical project designs earlier in the planning process. In this way, Anglo states that it may avoid resettlement and find alternative solutions where possible, reducing the impact on communities and mitigating project risks and costs. In the report, it commits to continue to develop operational due diligence guidance and functional measures for areas such as mergers and acquisitions and significant investment decisions, as well as legacy issues covering potential human rights risks and responsibilities when it divests a business. The report also highlights the right policies and processes in place to cover labour risks related to human rights, which will continue to be a focus.

Anglo's report also highlights commitments to a healthy environment mainly through the mining entity's goal to achieve carbon-neutral operations. The report stipulates its goal to reduce net greenhouse gas emissions by 30%, improve energy efficiency by 30% against the 2016 baseline and become carbon neutral across 8 of its sites.

The table below summarises the results of the criterion used to assess the sustainability reports for the selected mining companies in Zimbabwe.

Table 2. Assessment of mining companies against principles of sustainability reporting

Theme	UNKI	RIO ZIM	ZIMPLATS
1. Governance and Policy Commitments	Yes	Yes	Yes
2. Respect for human rights and conducting due diligence	Provides commitment to human rights and conducting due diligence	Not apparent	Not apparent
3. Grievance mechanisms and access to remedy	Yes	Not apparent	Not apparent
4. Practices to prevent human rights impacts	Commitments to prevent human rights impacts	Not apparent	Commitments to prevent human rights impacts
5. Responses to allegations of serious negative impacts on human rights	No	No	No

Source: Researchers' assessment of reports

10. Conclusion and recommendations

It is undeniable that the mining industry contributes to employment creation and in some instances, infrastructure development, which is crucial for the sustainable development of Zimbabwean communities. However, mining is inherently destructive to the environment, and several other adverse effects have been reported by mining communities, such as labour rights violations, displacement of communities, pollution, mine accidents and hazards. From the

snapshot analysis, it is apparent that most mining companies choose not to report allegations of serious negative impacts of their operations on human rights. They simply stipulate their existing policies and commitments to such policies, making it difficult to assess if any real remedy is being provided to affected individuals. In addition, there is strong and consistent reporting from areas where pressure mounts, such as on governance issues that impact shareholders.

In the absence of a harmonised sustainability reporting framework, companies tend to omit important subjects related to practices to prevent human rights and responses to allegations of human rights impacts, in favour of providing disclosures that are simple to furnish or make them appear good. Most sustainability reports offer a variety of themes and content to browse and lack standardised templates. As such, companies' disclosure transparency varies greatly, and the existing reporting practices do not benefit local communities. As a result, there is continued violation of human rights by the operation of businesses, i.e. mining companies in Zimbabwe.

Sustainability reporting practices are still evolving and as a result, the information is inconsistent as different stock exchanges have different guidelines. Therefore, it is difficult to make meaningful comparative analyses. In addition, many other mining companies are operating within Zimbabwe and are not bound to report on sustainability issues as they are currently not listed on any stock exchanges and may be responsible for human rights violations in the communities in which they are operating.

10.1 Recommendations

1. Sustainability in the mining sector must be made mandatory. While there are provisions for sustainability reporting through the Securities and Exchange (Zimbabwe Stock Exchange Listings Requirements) Rule, 2019, it is not mandatory. There are several ways that sustainability reporting can be made mandatory. Firstly, the Securities and Exchange Regulations providing for sustainability reporting must be made mandatory. Secondly, the Government of Zimbabwe can come up with a new law focusing on Sustainability Reporting. Thirdly this can be addressed through amending existing legislation like the Mines and Minerals Act through the ongoing reforms in the form of

the Mines and Minerals Amendment Bill. Another option is amending the Companies and Other Business Entities Act to promote sustainability reporting and corporate accountability. This will promote transparency and respect for human rights in Zimbabwe's mining sector, where serious human rights violations are taking place.

2. Mandatory Sustainability Reporting regulations are not good enough on their own. They must be complemented by the mandatory human rights responsibility of mining companies that includes Human Rights Due Diligence. A combination of strategies/ approaches will help sustainability reporting be effective.
3. Sustainability Reporting by mining companies should also be benchmarked against Environmental Impact Assessments (EIAs) and Management Plans that are developed by mining companies. EIAs and Management Plans are developed in terms of the Environmental Management Act and the Mines and Minerals Act. EIAs and Management Plans provide information about the actions that mining companies plan to take to address or mitigate the negative impacts of their activities. These provide a baseline from which sustainability reporting can be built and measured.
4. The adoption of Environmental, Social and Governance frameworks is another way of promoting sustainability reporting and corporate accountability in Zimbabwe's mining sector. ESG frameworks focus on impacts that directly result from mining activities. As such, their adoption and measures put in place to address negative ESG impacts emanating from their activities will help to promote sustainability reporting and corporate accountability.
5. Putting in place a Grievance Redress Mechanism is one of the ways of promoting sustainability reporting and corporate accountability. Sustainability Reporting should not be done as a greenwashing exercise. This means that when issues are identified from the reports, measures must be put in place to address them. The measures must include effective GRM for those stakeholders who were negatively affected by their activities.

Bridging the gap between gender, climate finance and food security in the human rights discourse: A case study of women smallholder farmers in Murewa District, Zimbabwe

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Abstract

Climate change is perhaps one of the greatest threats that our world faces today. While climate change impacts are being experienced globally, they have gendered dimensions that exacerbate and accelerate existing inequalities, while giving rise to novel ones. In Zimbabwe's rural communities where the economy is agrarian, food security and livelihoods are at a heightened threat, women who constitute the largest group in farming activities at 86 percent, are even more vulnerable. The case study indicates that despite the multiplicity of women's identity and roles as mothers, wives and smallholder farmers, women still prioritise and attend capacity building on Climate-Smart Agriculture (CSA) due to their responsibility towards food security within the home. These efforts are however impeded by their lack of access to credit facilities and the mistrust of banks and financial institutions whose credit facilities are predicated on traditional banking models, which place preference on scientific and technology-based projects, thus discriminating against rural women with their specific traditional knowledge and methods of farming. The Infrastructure Development Bank of Zimbabwe (IDBZ) offers climate finance for bankable projects by women who still face hurdles with meeting the traditional criteria for bankable projects.

The government has commenced initiatives such as Pfumvudza, loan schemes through the Ministry of Women Affairs and the Zimbabwe Women Microfinance Bank as well as the Zimbabwe Country Programme under the Green Climate Fund to avail climate finance for country projects. Yet, the private sector is still largely missing as an important stakeholder. With adaptation projects having significant budgetary implications, the State is not effectively harnessing the role of the private sector to ensure adequate climate finance where gender is a key consideration. It is thus imperative to stimulate the private sector into substantive action through incentives such as targeted lending, loan guarantees, green bonds and tax credits. This may enhance women's financing and funding options through public-private partnerships that embark on specialised initiatives to offer non-formal credit facilities with favourable interest rates for women to engage in climate smart agriculture without cumbersome requirements. As such, the Climate Change Bill must provide for the establishment of a National Climate Fund that includes mechanisms for resource mobilisation from public and private sources with gender-sensitive implementation, substantive inclusion of women in climate action, while

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prioritising women smallholder farmers in climate smart agricultural projects. This will secure the food security of communities in Zimbabwe.

1. Introduction

The climate crisis has brought into sharp focus the existing inequalities and vulnerabilities of marginalised groups such as women.⁷⁹ According to the situation analysis in the NDS1,⁸⁰ poverty and vulnerability in Zimbabwe have been on the rise in the past decades mainly due to droughts, cyclones and floods that have exposed a number of citizens to food insecurity, hunger and starvation. The number of people under the food poverty line has increased from three million people in 2011 to about six million in 2019 and about 7.6 - 8 million in 2020.⁸¹ These numbers will continue to rise with vulnerable groups at a heightened risk.

Zimbabwe has made progressive strides to formulate policies on climate change. In particular, the Climate Change and Gender Action Plan, 2020 (GAP) is an extensive document which sets out the inclusion of women in climate action particularly in climate-smart agriculture strategies. However, the seasonal shifts and erratic rainfall patterns create difficulties in planning under extremely unpredictable and deep uncertainty, where such planning requires substantial financial input, requisite knowledge of adaptive mechanisms and capacity building on climate-smart agriculture. This is problematic for most women because 86 percent of the women residing in rural areas depend on agriculture for their food security and livelihood while 70 percent of the agricultural workforce consists of women.⁸² Zimbabwe is a landlocked country with almost 75 percent of the country being semi-arid and experiencing low and erratic rainfall. According to the ZIMSTAT Intercessional Demographic Survey (2017), about 67 percent of the total population lives in rural areas where livelihoods are mostly agrarian and are substantially reliant on a conducive climate for sustenance. It is also noted that the agricultural sector is a climate-sensitive sector and is the backbone of economic growth, food security and poverty eradication in Zimbabwe.⁸³

⁷⁹ UN Women 'Women, Gender Equality and Climate Change Fact Sheet' 2009.

⁸⁰ The National Development Strategy 1 is a policy that is aimed at realising Zimbabwe's 2030 Vision. The NDS1 has many objectives which include ensuring sustainable environment protection and resilience. Its priorities include economic growth, food security and nutrition, natural resource management, climate resilience and environmental protection.

⁸¹ Government of Zimbabwe "National Development Strategy 2021-2025" para. 777.

⁸² The National Gender Policy (2013-2017).

⁸³ World Bank, 'Zimbabwe Public Expenditure Review with a Focus on Agriculture' 2019 p. 6.

The pre-existing inequalities that women are already experiencing such as structural and institutional discrimination, and harmful cultural practices that inhibit them from equitable access to finance, make them especially vulnerable to climate change. This vulnerability is not in a vacuum, since everyday women make decisions and are in charge of food and nourishment within the household. Their inability to adapt to climate change has far-reaching effects on food security and livelihoods within the home and the community at large.⁸⁴ This requires substantial financial input to mitigate and build resilience to climate change.⁸⁵

Climate finance has been availed to Zimbabwe by the Green Climate Fund (GCF), which is being implemented under the Zimbabwe GCF Country Programme 2020-2024, where gender is a key consideration.⁸⁶ Banks as part of the private sector have been identified in this strategic document as key stakeholders, having a leadership role in building resilience and investment in “green products” and technology that enhance food security and sustainable livelihoods in rural areas. This is particularly pertinent because women in rural areas are still experiencing multiple hurdles in accessing adequate agro-based financing or credit systems to enable them to transition to climate-smart agriculture.⁸⁷ It is worth investigating how banks and other relevant financial institutions as specialised organs of society have been contributing towards resilience and capacity building as well as mobilising funds to capacitate vulnerable groups such as women small-holder farmers.

This paper therefore seeks to interrogate the nexus between gender, climate change and climate finance, to expose the gender gaps in equitable access to climate finance and how these gaps are contributing to food insecurity for women smallholder farmers in the face of climate change. The paper further seeks to analyse the role of the banks in public private partnerships that can bridge the gender gap between climate finance and gender-equitable access to climate finance. Additionally, the paper explores solutions through an investigation of the opportunities and challenges rooted in women’s lived realities that will enable them as small-holder farmers

⁸⁴ A. Jerneck, ‘Taking gender seriously in climate change adaptation and sustainability science research: views from feminist debates and sub-Saharan small-scale agriculture’ *Sustain Sci* (2018) 13 pp. 403-416.

⁸⁵ Climate Finance is defined as local, national or transnational financing, drawn from public and private sources or alternative sources of financing that seek to support mitigation and adaptation action that will address climate change. UN General Assembly, United Nations Framework Convention on Climate Change : resolution / adopted by the General Assembly, 20 January 1994, A/RES/48/189, available at: <www.refworld.org/docid/3b00f2770.html> accessed 20 September 2023>

⁸⁶ UN Environment Programme & Green Climate Fund, ‘Zimbabwe’s Green Climate Fund Country Programme 2020 – 2024’ p. 19.

⁸⁷ A. Jerneck, *supra* note 7.

to access climate finance for sustainable food security. The paper is based on a case study of women smallholder farmers in Murehwa District, Zimbabwe.

2. Methodological and Conceptual Framework

Article 15 of the African Charter on Human and People's Rights on the Rights of Women in Africa (the Maputo Protocol) obligates state parties to ensure that women have the right to nutritious and adequate food. This includes taking appropriate measures to: provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food. In addition, Article 19 elaborates on women's rights to sustainable development, with Article 19(d) underscoring the duty of the state to promote women's access to credit, training, skills development and extension services at rural and urban levels, to provide women with a higher quality of life and reduce the level of poverty among them. Arguably, the State must ensure that these rights are fulfilled through the inclusion of pertinent non-state actors such as banks to encourage a culture of human rights in the private sector, ensuring gender equity. This is envisaged in the above-mentioned Green Climate Fund (GCF) Zimbabwe Country Programme 2020 -2024 where banks are identified as key stakeholders in resilience building and adaptation to climate change through climate finance and accessible green products.

It is important that gender is integrated at various levels including at the (private) institutional level. This entails an analysis of the feasibility of an inclusive multilevel partnership approach in planning and funding decisions for climate finance to ensure food security. This paper focuses on the specific vulnerabilities that women in Zimbabwe are facing in the context of climate change, including the lack of access to loans and climate finance, which threaten food security.

2.1. Human Rights-Based Approach and a Sustainable Livelihoods Analysis

A Human Right Based Approach (HRBA) was adopted for the study to identify the relevant human rights framework and the identification of rights holders, the duty-bearers as well as the role of private institutions such as development banks in mobilising and catalysing climate finance in a gender-equitable manner. This was instrumental in enabling an analysis of the

power relations through semi-autonomous social fields⁸⁸ that function parallel to the law and how they affect women's access to finance differently than men despite their legal rights and entitlements to equality and non-discrimination.

The HRBA therefore was a yardstick to assess the best standard of practice to measure the contribution of the state and private institutions in the promotion, fulfilment and protection of women's food security and equitable access to finance in the context of climate change. The application of a HRBA exposes the various gaps in the legal and policy framework, including "dormant" institutions, in a bid to explain the actual lived realities of food insecurity of women small-holder farmers in the face of climate change despite elaborate international human rights and constitutional provisions.

2.2. Sustainable Livelihood Analysis

A sustainable livelihood analysis approach was also necessary for the study to enable the analysis of capital (natural, physical, human, social and financial), to establish who has access to and control over it. The analysis brought out how women access finance; and how this is intrinsically linked to women's access to other resources that enable them to successfully adapt to climate change as small-holder farmers. It also enabled the investigation of the survival mechanisms that women have crafted in order to build resilience to climate change as small-holder farmers.

2.3. Power, Sex and Gender Analysis (PSG Analysis)

The PSG Analysis focuses on studying the different economic and social roles that women and men play with the aim of understanding the resources they have as well as their needs and priorities. PSG Analysis further focuses on the gender-specific vulnerabilities, inhibitors, attitudes and perceptions of the different actors such as those among women - male counterparts, policy-makers and key personnel in the relevant institutions (both public and private). Additionally, the PSG analysis was relevant to analyse women's access to climate information and services.⁸⁹ The PSG Analysis thus informed critical questions on how women

⁸⁸ According to Bentzon, A. W *et al.* (1998) semi-autonomous fields of law are rules, conduct or customs that are informal but regulate with same effect with that of law particularly on how women are to be treated which differs from the treatment accorded to men, the division of labour within the household and how finances are accessed and utilized within private spaces. These semi-autonomous fields of law can also be replicated within public and private institutions.

⁸⁹ World Bank & FAO, 'How to Integrate Gender Issues in Climate-Smart Agriculture Projects' 2017.

and men access productive resources, time allocation as well as needs and priorities. The researchers made use of the Stakeholder Priority Analysis as part of the PSG Analysis to make comparisons between the needs and priorities of men and women through the Pairwise Ranking Tool.

2.4. Methods of Data Collection

The research focused on the collection of empirical data through the purposive sampling of women small-holder farmers in the Murehwa district area,⁹⁰ as well as key informants in pertinent institutions. The methods of data collection that were used include:

- Participatory Observation;
- Expert Interviews
- In-depth Individual Interviews;
- Focus Group Discussions;
- Experiential Data; and
- Secondary Sources of Data such as books, the internet, journals, reputable online national news websites and university library books.

The qualitative data of the research was generated through focus group discussions, interviews, observation, and participatory data. A total of 43 respondents, women and men were interviewed. Purposive sampling was used to select the respondents as key experts in the field of gender and/or climate change and/or climate finance as well snow-balling through the Murehwa Rural District Council Gender Committee Chair to identify women small-holder farmers who were willing to provide insight based on their lived experiences with climate change and finance.

3. Findings of the Research

The overall research question for the study was whether climate finance is gendered and the impact this has on the food security of women smallholder farmers.

The research was based on the following sub-research questions:

- a) What is the nexus between gender, climate change and climate finance and how is this contributing to the lack of food security for women small-holder farmers?

⁹⁰ Murehwa is a rural district in Mashonaland East Province of Zimbabwe. It consists of a Growth Point and villages where economic activity is mainly informal consisting of agrarian as well as buying and selling.

- b) How are the gender gaps in access to climate finance addressed in the Zimbabwean legal system?
- c) Is there gender bias in the lending practices that are embedded in traditional banking processes and decision making, which lead to the discrimination of women in accessing loans, credit facilities and climate finance initiatives?
- d) What survival mechanisms have the female small-holder farmers employed to ensure food security?
- e) What are the viable and practical solutions, based on opportunities and challenges rooted in women's lived realities that will enable female small-holder farmers to adapt to climate change and establish sustainable food systems?

3.1 Women, Climate Change and Food Security and the Feminisation of Agriculture

"Climate Change is all around us." Most of the women were knowledgeable about climate change, indicating that even though they had been told what it is through community awareness campaigns they were experiencing its effects already. During a focused group discussion, the women identified several climate change impacts which encompassed the following:

- i. Season shifts;
- ii. Erratic rainfall patterns;
- iii. Rise in temperatures; and
- iv. Water scarcity.

Throughout the discussion, it was observed that women have a firm grasp of what climate change is due to its effect on their day-to-day lives, particularly in so far as their agricultural endeavours are concerned. The women stated that "because of climate change, we now have to do more, we look for water for our community garden, and for our home gardens so that the family can survive." In addition, when it comes to household finances, the married women indicated that due to the division of labour within the home, they did not control the household income earned by their husbands while some indicated that they did not even know how much their husbands earned, and did not have a say in resource allocation within the household and their farming activities. This reveals the importance of farming and its proceeds as a source of empowerment for the livelihoods of women small-holder farmers.

An important observation is that traditional seed exchange relationships are becoming weaker between women or in the community in general, with more emphasis being put on the commercial seed sold by seed companies. This has weakened the community ties and cooperation of women in seed exchanges and the sharing of knowledge on adaptation to climate change based on generational knowledge in the various clans and communities at large.

According to the Zimbabwe Gender Commission, there are over 70 per cent of women smallholder farmers, and about 85 per cent of women are involved in agricultural activities. This figure has been steadily rising due to the rise of subsistence farming in urban areas. All women respondents were actively involved in agriculture although none of them had title to the land, while only 20% per cent of them had their names registered with the Chief. In Zimbabwe, rural land constitutes communal land⁹¹ and is vested in the President, as stipulated by section 4 of the Communal Land Act [Chapter 20:04]. Consequently, there is no security of tenure for communal land, which in terms of section 10 of the Communal Land Act [Chapter 20:04] can be set aside for other development such as for townships, villages, business centres or industrial areas.

Through the use of targeted questions, a food security calendar based on farming activities and climatic conditions was established and is displayed below.

	Dry Months (April – Mid December)	Wet Months (Mid December to End of March)
Rainfall	Little to no rainfall	Erratic Rainfall patterns and rain distribution
Agricultural Labour	<ul style="list-style-type: none"> -Harvesting (if there is a decent crop yield) -Piece jobs at nearby commercial farms, harvesting grains and also assisting in horticulture (mostly women) -Men migrate to urban areas in search of employment -Watering of subsistence vegetable gardens planted by women for everyday consumption 	<ul style="list-style-type: none"> Land preparation, planting, mulching, weeding, and cultivation of subsistence crops and gardens. Water Harvesting.
Food Availability	Food insecure to a greater extent.	Somewhat food secure, even where there is poor crop yield, subsistence gardens are near small streams of rivers that are revived during the rainy season, despite uneven rainfall distribution.

⁹¹ Section 332 of the Constitution defines the term “Communal Land” as “land set aside under an Act of Parliament and held in accordance with customary law by members of a community under the leadership of a Chief”.

	Dry Months (April – Mid December)	Wet Months (Mid December to End of March)
Water Availability	<p>-Most water sources are dry including river streams and wells, women now engage in water-harvesting through weir dams, water used for gardening and everyday usage.</p> <p>-Women, however, still have to walk 2 km+ to fetch water at the nearest borehole for potable safe drinking water.</p>	<p>Most wells have water during the rainy season when there is no drought as well as small river streams</p>
Income	<p>-Little to no income, income derived from piece jobs at nearby commercial farms.</p> <p>-Other elderly women derive income from their adult children in the diaspora'</p> <p>-Married women that have husbands that are gainfully employed and have access to the husband's income and economic resource.</p>	<p>Income is derived from selling surplus should there be some.</p> <p>-Other elderly women derive income from their adult children in the diaspora.</p> <p>-Married women that have husbands that are gainfully employed and have access to the husband's income and economic resource.</p>
Expenditure	<p>Food, School fees, household utilities, clothes (especially for the children).</p>	<p>School fees, household utilities, clothes and the expense of food slightly lessened due to indigenous fruits, vegetables and crops that are drought resistant such as millet and sorghum.</p> <p>Agricultural inputs, herbicides, pesticides, additional agricultural labour.</p>

Figure 1: Food Security Calendar according to the Sustainable Livelihoods Analysis

3.2 International and Regional Best Standards Principles on Gender Responsive Climate Action

From the Key Informant Interviews (KIIs) it was acknowledged that there are huge gaps in the climate change legal and policy framework such as the Climate Change Response Strategy and the Climate Policy which lack cogent provisions on gender considerations. It was indicated that the Climate Change and Gender Action Plan (discussed more fully in section 4.3 below) has been put in place to incorporate gender in climate action, including provisions on climate finance. However, the Gender Action Plan is not underpinned by any statutory obligations such as an all-encompassing Climate Change Act (drafting of which was stated to be already underway with consultations commencing soon). The Paris Agreement in Article 7(1) reiterates the global goal of enhancing the adaptive capacity, building resilience and reducing the vulnerability of people and institutions and Article 7(2) acknowledges that adaptation is key to

the protection of people's livelihoods including the urgent needs of people in developing countries. Article 7(5) further stipulates that adaptation must be "country-driven, gender-responsive, participatory, fully transparent, taking into account vulnerable groups." The Paris Agreement recognises that effective adaptation by women particularly has barriers and as such must be responsive to the specific needs of women and men respectively. This includes an effective targeted approach to specific groups such as smallholder farmers, which requires a good grasp of the gender roles and division of labour in economic and livelihood activities. Such a targeted approach ensures that awareness raising, training, capacity building and the introduction of new technology, are targeted towards those who are actually engaged in the work in an effort to build the productivity, capacities and equal participation of both men and women.⁹² Articles 9 and 10 of the Paris Agreement make provision for the mobilisation and implementation of climate finance in adaptation and technology development and transfer in building the resilience of communities to climate change.

Moreover, the Cancun Adaptation Framework established by the COP.16 also reaffirms the mandate of State Parties pertaining to adaptation and resilience building. The Adaptation Framework outlines guidelines to enable and capacitate the State Parties, particularly the least-developed countries, to successfully adapt to climate change. The National Adaptation Plan in Zimbabwe is closely modelled against the Global Adaptation Framework set out in Fig 2 below.

⁹² Food and Agriculture Organization in the United Nations, 'Gender mainstreaming and a human rights based approach' 2017.

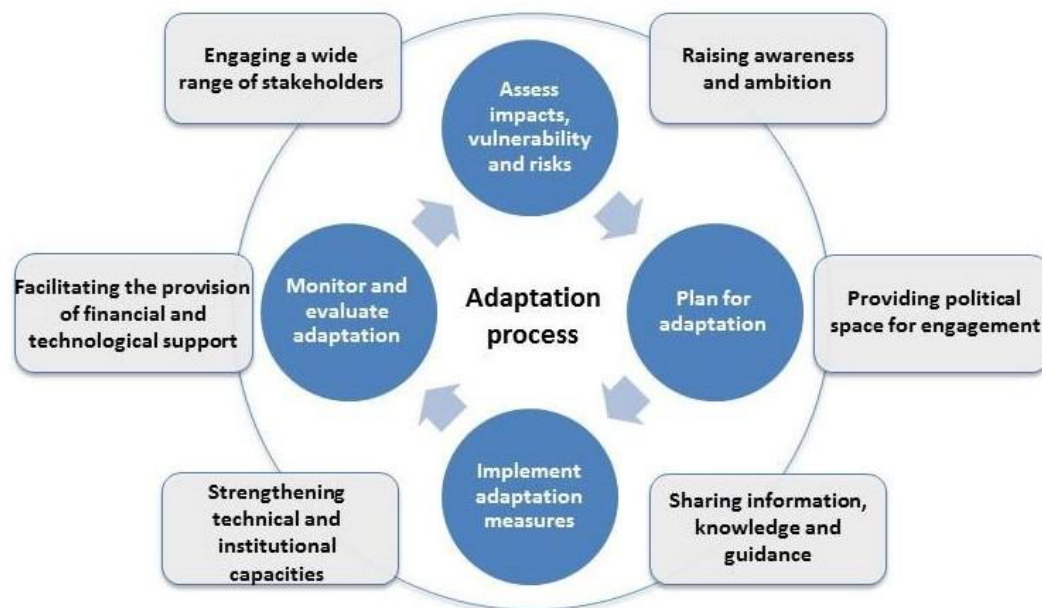


Figure 2 – image obtained from the UNFCCC website on the Cancun Agreements

Fig 2 above outlines the salient principles agreed upon in the Adaptation Framework. State Parties are obligated to take a gender-responsive approach and take into account other interconnected human rights in the implementation of the adaptation framework. These principles include: the State facilitating the provision of financial and technological support as well as engaging a wide range of stakeholders to achieve the steps set out in the Adaptation Framework. In engaging “a wide range of stakeholders” as stipulated in the Adaptation Framework, women must be part of the stakeholders consulted by State Parties, International Non-Governmental Organisations (INGO) and the Civil Society at large. Moreover, the private sector including banks must be included substantively and not as a mere formality given their critical role in climate action.

Under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) rural women have specialised rights under Article 14 which are further elaborated by the Committee on the Elimination of Discrimination against Women in General Recommendation No. 34 on the rights of rural women. The CEDAW Committee takes cognisance of the pivotal role that rural women play in maintaining and/or improving rural livelihoods and strengthening rural communities. It stipulates that the State must address specific threats posed to rural women by climate change and other environmental issues. It places an obligation on the state to allay and mitigate threats and impacts of such risks so that women enjoy a safe, clean and healthy environment as well as the inclusion of rural women in

the planning and implementation of all policies concerning the environment and climate change. This is further echoed in the Maputo Protocol which stipulates the right of women to food security including “*the means of producing nutritious food to establish adequate systems of supply and storage to ensure food security.*”⁹³ The Maputo Protocol further provides for women’s right to sustainable development, stipulating that the State must include gender perspectives in national development planning procedures, which promotes “*women’s access to credit, training, skills development and extension services*” in rural areas to reduce poverty among women.⁹⁴

3.3 Climate Finance in Zimbabwe

The Green Climate Fund (GCF) set up in 2010 by the United Nations Framework Convention on Climate Change (UNFCCC) has a pivotal role in breathing life into the Paris Agreement, particularly on the adaptation to the adverse impacts of climate change and building resilience of communities. This is done by channelling funds to developing countries committed to climate action.⁹⁵ The new agro-ecological zones as revised in 2020 are pivotal in the effective prediction of potential productivity for specific crops in particular locations, determination of crop-water requirements and overall employment in designing appropriate agricultural adaptations for reducing vulnerability as well as providing policy guidance for climate proofing the agricultural sector. However, this calls for the equitable deployment of climate finance to ensure that smallholder farmers are alive to this reality and its implications on their agricultural endeavours.

The GCF recommends 6 national priorities for climate finance, one of which is Climate-Smart Agriculture (CSA), whose key results are food and water security as well as livelihoods for people and communities.⁹⁶ This priority is implemented through the Climate Change Management Department as the National designated Authority and the Secretariat of the GCF Coordination Framework. This Department consists of numerous stakeholders such as the Ministry of Environment as the Chair, NDC Subcommittees, UN Agencies, representatives of

⁹³ Article 15 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.

⁹⁴ *Ibid* in Article 19(d).

⁹⁵ UN Environment Programme & Green Climate Fund *supra* note 11 p. 1.

⁹⁶ *Ibid* p.17.

the rural and urban authorities, CSOs and the private sector.⁹⁷ The composition of the national GCF Coordination Framework membership is illustrative of the cohesive and multilateral approach to climate finance. However, the gaps that have been identified include the limited accreditation support to potential and nominated Direct Access Entities such as banks.⁹⁸ It was also revealed that the arduous process of global funding approval procedures precludes most private players from accessing climate finance. The proposals have cumbersome requirements, which should be backed by scientific data that requires extensive and pricey research. In Zimbabwe, under the GCF the current accredited bank is the IDBZ.

The Zimbabwe Relief Building Fund (ZRBF) administered by a consortium of CSOs and relevant government departments such as the CCMD is funding small grain farming, storage management, water-harvesting, animal husbandry, farming of animal feed and promotion of indigenous knowledge systems in and around Zimbabwe. There are however issues of ‘stocktake’ and documentation as the project is being implemented under various government departments such as the Ministry of Agriculture, Ministry of Health and Child Care, Office of the President and Cabinet, Social Welfare Department and Ministry of Environment.

Through the Key Informant Interviews, it was suggested that apart from relying on global funds there is a need to utilise public funding to leverage private financing in climate action. For instance, the State can use carbon tax as a resource mobilisation tool for mitigation and adaptation. Public funds can also be used to craft and implement market environment policies which seek to serve climate change governance objectives.

3.4 Women Small-holder Farmers' Access to Resources

Through use of the Pair Wise Ranking Tool,⁹⁹ the researchers sought to interrogate the priority concerns of women farmers that are affecting their farming and their food security. The responses were presented through the different options available below, showing the women's concerns about the rise in the cost of inputs. Climate change ranked second in this Stakeholder Priority Analysis as the women were of the view that if they had adequate access to finances,

⁹⁷ *Ibid* p. 22.

⁹⁸ *Ibid* p. 31

⁹⁹ The pairwise comparison method works by comparing each alternative against every other alternative in pairs. For instance, climate against pests to ascertain which poses a greater threat to food security. The pairwise ranked against each other based on the alternative that appears most in the pairwise table.

they would be better positioned to adapt to climate change through climate-smart agriculture that is resource and labour-intensive.

Problem	Climate	Pests	Weeds	Cost of Inputs	Lack of Land
climate		climate	climate	Cost of inputs	climate
pests			Weeds	Costs of inputs	pests
weeds				Cost of inputs	weeds
Cost of inputs					Cost of inputs
Lack of land					

Figure 3: Pairwise Rankings as per Stakeholder Priority Analysis

Ranking

Cost of Inputs – 4

Climate Change – 3

Weeds – 2

Pests – 1

A further probe in the focus group discussion was held in Ward 1 Murehwa with a group of 10 women small-holder farmers. It was highlighted that with access to resources, the women farmers would acquire drought-resistant seed varieties, build more weir dams (for water storage) as well as obtain machinery to assist in the de-shelling of the recommended hard-shell millet variety to curb yield loss to millet eating birds. The men, on the other hand, were of the view that establishing irrigation schemes would solve the challenges posed by climate change. This demonstrates that women's solutions and priorities are more practical and immediate while the men's suggestions were more long-term and community-based.

In an interview with a key informant in the Climate Change Management Department, it was indicated that over 85 percent of the districts have been trained on how to mainstream Climate Change and Gender in budgeting, particularly in the RDCs. With the Meteorology Department having issued a warning that Zimbabwe will experience below-normal rainfall this farming season, it was stated that more climate finance is needed and should be implemented in a gender-sensitive manner.

The Climate Change Management Department (CCMD) indicated that “various communities around Zimbabwe are being capacitated to have bankable projects.” The Department is capacitating Provincial Teams, including five persons per Province, including over 50 persons that have been trained through local universities to train others on climate change issues. The Chairperson of the Gender Committee indicated that from her experience as an Alderman within the RDC and as a Councillor for Ward 1 in Murehwa, the majority of small-holder farmers are women and are in critical need of climate finance. As such, most of the interventions by the Government in the area are targeted at women, to enhance their access to financing for their business and agricultural activities through creating of groups and applying for funding from the Ministry of Women Affairs, Community, Small and Medium Enterprises, where the terms are flexible with low-interest rates of between 8-9 percent. There is also specialised funding for GBV survivors as a source of empowerment as most of these women are also small-holder farmers as well and who channel the funding to purchase seeds. The Chairperson emphasised that “climate action must be a cohesive effort, where the private sector is also included and must pull their weight in complimenting the State and NGO’s efforts in building resilience.”

3.1. *Coping Mechanisms*

Men indicated that to cope with climate change impacts, many resorted to migration, investment in crop diversification and drought-resistant crop varieties. This indicates that men have the freedom to migrate, unlike women who have the role and responsibility of taking care of the family and are thus responsible for the immediate needs of the family such as food security within the household. Another important observation is that the male respondents indicated investment in crop diversification as a coping mechanism suggesting a firm control of the household finances. The women on the other hand, are crafting their survival strategies

where they are in firm control through engaging in *Mikando*, which are Women Village Saving Schemes that women have constituted on their own through assistance from development aid partners such as Adventist Development and Relief Agency (ADRA) who taught them the methodology. These saving schemes have a ‘Constitution’ that sets out the terms of reference of the *Mikando* and the collateral for loan, usually in the form of movable property such as gas stoves, kitchen utensils and livestock. The women stated that they preferred taking loans from *Mikando* due to their relationships based on trust and sisterhood and the flexible terms that *Mikando* offers. They also indicated that the *Mikando* was not only about money, but the use of the money raised through *Mikando* contributions to add to the food security of the home through purchasing of basic food commodities in bulk, accumulated and shared by members every 6 months.

The women also stated that the *Mikando* was empowering them to buy drought-resistant seeds, and pay for additional labour to assist with their farming activities. This in turn enables them to focus on other tasks within the home that require their attention, such as taking care of the children, cooking and ensuring hygiene and sanitation within the household.

4. Discussion of Findings

4.1. The gender, climate change and climate finance nexus

The Paris Agreement, alive to this gender, climate change and climate finance nexus, in its Preamble takes cognisance that although climate change is affecting everyone, State Parties have the duty to “address, respect, promote and consider their respective obligations pertaining to gender equality.” Articles 9 and 10 of this Agreement make provision for the mobilisation and implementation of climate finance in adaptation, technology development and transfer, and building the resilience of communities to climate change. Although there is no specific mention of gender-responsive climate finance, States have a mandate to ensure that climate finance is mobilised and expended in an inclusive manner. This includes a duty to ensure and promote gender equality through positive steps that address existing inequalities and climate finance. The duty ensures the special provision for vulnerable groups such as female smallholder farmers to accelerate, encourage and enable inclusive innovation.

Evidently, gender is an important consideration in climate action. Women bear the brunt of taking care of the household including making sure of the adequacy of food within the home. One interviewee stated that, “We are the ones who take care of the children and the household, so the burden is on us to feed our families every day.”¹⁰⁰ It was also indicated that this burden is further exacerbated by unforgiving climatic conditions such as erratic rainfalls, and extreme temperatures that are not conducive for small-holder farming in the absence of resources to implement new technologies such as hydrogels to retain soil moisture, drip-irrigation systems, irrigation schemes and other climate-smart agriculture methods. Due to the subsistence nature of women’s farming in the form of vegetable gardens and small livestock, their work remains largely invisible to policy makers and the private sector who remain focused on large scale projects, the benefits of which may not cascade to every household. Moreover, the study showed the fundamental differences in farming by women and men. Women opted for practical techniques such as crop varieties, and traditional methods such as crop rotation, intercropping and mulching. Men, on the other hand, suggested large-scale community interventions such as irrigation systems. From this alone, it can be observed that women’s farming needs are more immediate and urgent, requiring practical and urgent solutions to address food security within the household, rooted in their daily lived experiences.

4.2. *The Dynamics of Power in Climate Finance*

A climate finance expert from AFRODAD indicated that “*the key to understanding climate finance is the power dynamics that influence how it is generated and distributed.*” This suggests an analysis of how certain groups control key institutions, resources and set the agenda. The structuration perspective postulates that the system(s) enables the pre-determination of the actions of decision-makers.¹⁰¹ This can be seen through the ‘traditional banking system’, which is based on a model that systematically excludes women from accessing loans. The exclusion is done through cumbersome loan requirements such as requirements for immovable property as collateral (women were historically excluded from owning immovable property), and proof of employment (the majority of women small-holder farmers are not formally employed). Some banks, such as the ZWMB, offer joint collateral for groups of women applying for loans for entrepreneurial endeavours, including farming.

¹⁰⁰ A woman small-holder farmer from Ward 1, Murehwa.

¹⁰¹ A. Giddens, *The Constitution of Society: Outline of the Theory of Structuration*. (University of California Press, Berkeley and Los Angeles, 1986) pp. 16 – 25.

However, due to its under-funding as a governmental bank, the resources may not be adequate to make a significant improvement to the problem. Due to the systematic exclusion by banks, the researchers observed that women were mistrustful of banks and thereby apprehensive of taking loans. This reluctance to borrow from the very system that has systematically excluded them portrays a high degree of financial awareness.

Through key informant interviews, it was stated that there were various options for women to access climate finance through the Rural District Council's Revolving Fund, an entrepreneurial programme that funds women's livelihood programmes such as poultry projects, water-harvesting, horticulture and the country-wide *Pfumvudza* Programme. It was also revealed that access to these facilities was mostly dependent on political party affiliation and marital status. Married couples were given first priority based on the traditional perception of marriage providing the ideal family unit while single women were considered last. This further demonstrates the dynamics of power at play informed by customary norms.

4.3. *Gender Gaps in Climate Finance Governance*

The Constitution of Zimbabwe in Section 73 sets out a general right to a healthy environment, stating that everyone has the right to a healthy environment that is not harmful to one's well-being. There is no specific reference to climate change although climate change is classified as an environmental issue, creating the basis for its relevance within the right to environment. Climate change has been covered under various instruments in Zimbabwe such as the NDS1, the Climate Change Report, the Climate Change Policy and the Climate Change and Gender Action Plan. UN Women notes that formal policies and strategies may increasingly identify the constraints and inequalities that women face, but few national policies include objectives to address them. This is despite the evidence that a broader approach to women's empowerment reduces the barriers to their participation and changes the norms and rules that constrain it.¹⁰²

The Ministry of Environment through its Climate Change Management Department put in place a Climate Change and Gender Action Plan (GAP) to provide for women's needs in any meaningful way and thereby complement the earlier policies. GAP is also a response to the Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report which calls for

¹⁰² UN Women, 'Beyond COVID-19: A Feminist Plan for Sustainability and Social Justice', 2021 p. 55.

gender to be among the chief socio-economic factors that determine vulnerability to climate change. As such, the GAP (2020 p.21 Priority Area C- AFOLU) stipulates a number of strategic activities to be undertaken. These include:

- i. To implement capacity building programmes on local level food and seed management through:
 - Documentation and dissemination of traditional knowledge systems about preserving food and seed;
 - Enhance extension services that promote crop diversification including the cultivating and consumption of indigenous and drought resistant crops;
 - Conduct research on new crops and multiple stress varieties; and
 - Establishment of women and youth-led enterprises of seed breeders and distributors at local level (community seed banks).
- ii. To promote gender-responsive climate-smart agricultural technologies particularly for women farmers through:
 - Dissemination of information and promotion of technologies that promote sustainable agricultural practices such as conservation agriculture;
 - Investment in water harvesting; and
 - Facilitate the training and dissemination of Agriculture mechanization technologies amongst women and men.
- iii. To increase capacity for research, education and extension services with respect to gender and climate change through the creation of community climate information centres to enable women farmers to access climate information.
- iv. To build on women and youth funding mechanisms to increase access to women and youth farmers to be climate resilient.

However, there is the glaring absence of cohesive climate finance mechanisms underpinning the lofty provisions of the GAP. UN Women notes that a formal gender policy or gender action plan for climate-finance instrument is not adequate. Therefore, climate financing must systematically integrate gender equality within governance structures and public participation mechanisms, ensuring that the expertise of women's organisations is central in programme design, implementation and evaluation. It was further noted that:

“Particular efforts must be made to increase accessibility for smaller women’s organizations, which often lack the time and capacity to fulfil bureaucratic accreditation requirements and are frequently precluded from accessing funding by a financing architecture oriented towards large-scale projects.”¹⁰³

Fundamental components that underpin climate finance include de-risking, regulation and guidelines, market-based incentives (such as tax credits), information and capacity, and domestic and international public finance as outlined in Fig 4.¹⁰⁴ Key financial measures are equally important. For instance, green bonds which sync environmental and financial risk into return-generating commodities that can be either bought and held, or traded on secondary markets. Their goal is to transform the pools of capital by fixed-income investors such as pension funds into climate finance.¹⁰⁵ It must also be noted that green bonds must not only be channelled towards large-scale mitigation projects but nation-wide climate resilience building with a special focus on sustainable food systems.

Another important component is the gender and social inclusion factor which ties all these fundamental climate finance governance imperatives together. It has been noted that while stability, simplicity, transparency, consistency, coordination and adaptability are crucial for the effectiveness of policies to stimulate financial flows, a good governance system should be inclusive, participatory, structurally clear and representative. AFRODAD noted that:

“Success in climate finance policy not only includes the mobilization of additional finance, but also the achievement of climate goals (environmental integrity), minimization of public cost (economic efficiency), and careful incorporation of equity (fairness) considerations.”¹⁰⁶

This is illustrated below.

¹⁰³ *Ibid.*

¹⁰⁴ AFRODAD, ‘Political Economy of Climate Finance in Africa’, 2021 p. 18.

¹⁰⁵ *Ibid* p. 11.

¹⁰⁶ *Ibid* p. 19.

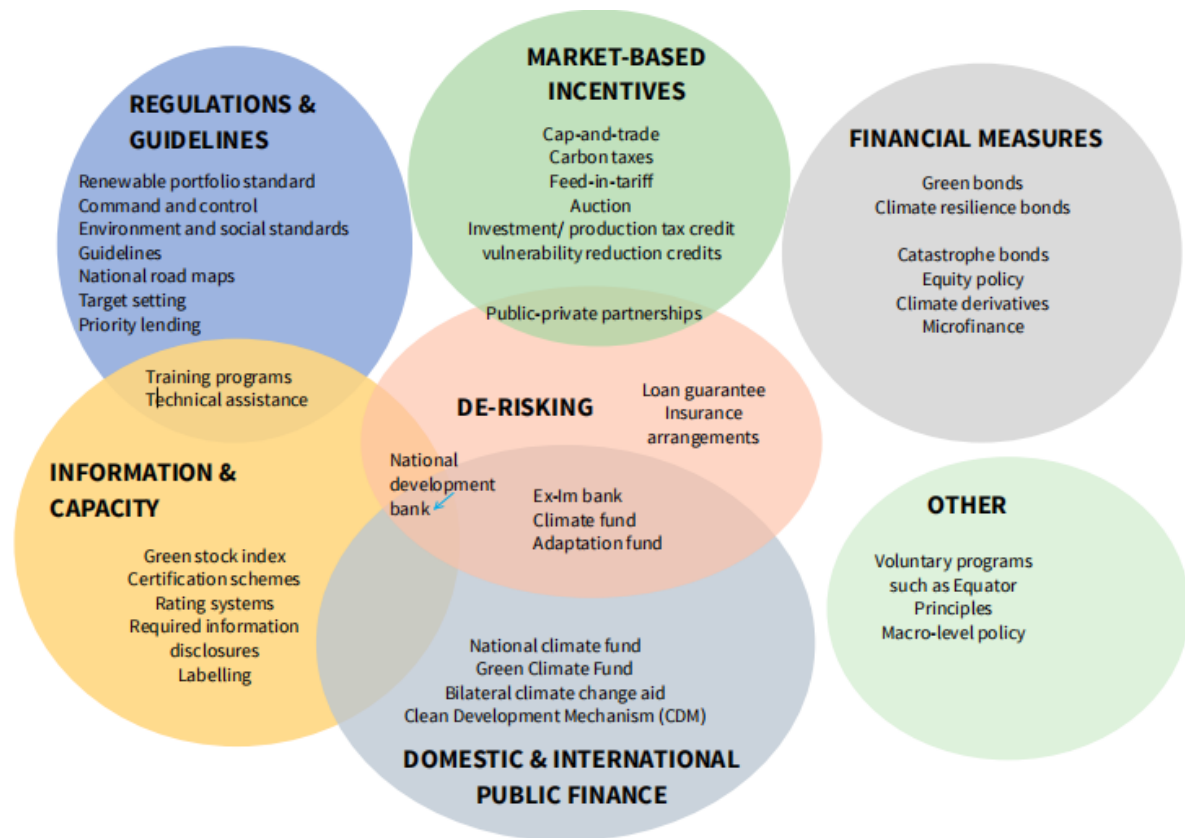


Figure 4: Climate Finance Policies adapted from AFRODAD

In figure 4 above, the inclusion of a National Climate Fund is an integral part of ensuring adequate climate finance. Moreover, the role of the State in harnessing the role of the private sector in climate finance is apparent. This encompasses the inclusion of market-based incentives in policy through tax credits, vulnerability reduction credit, loan guarantees, and insurance arrangements, for all green projects by the private sector that are inclusive and target rural women.

The NDS1 also takes cognisance of the substantial impact climate change has on vulnerable groups. It identifies the issues that climate change brings to the surface particularly when it comes to access (control and ownership) of the depleting natural resources, which is exacerbating poverty. However, it does not take specific cognisance of the actual gendered impacts of women who are closer to their natural environments as household managers and are responsible for providing food for the family. These same women are the majority of smallholder farmers who derive their income from agricultural activities. From a Human Rights perspective, the NDS1 does not adequately streamline gender issues in its strategy for climate action and protecting the environment. Nevertheless, it takes cognisance of vulnerable groups

and how climate change exacerbates existing inequalities. The NDS1 aptly points out that climatic change will cause traditional agricultural methods to be unsustainable and eventually impossible, calling for strategies to protect the environment. Yet it does not provide practical solutions to address the adverse impacts on women, the majority of small-scale farmers in both rural and urban areas. Secondly and perhaps more importantly, the NDS1 lacks provisions for climate finance, the inclusion of relevant stakeholders and mobilisation of funds for effective adaptation. Moreover, for vulnerable groups there is no mention of adaptive methods and how women should be incorporated thereof.

4.4. *Climate Finance and Progressive Realisation of Economic Social and Cultural Rights through Public and Private Partnerships (PPPs)*

The right to adequate food is espoused under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) setting out the right to an adequate standard of living (Article 11 (1) and the mandate of the State to take progressive steps to realise this right (Article 11 (2)). Though the right is to be progressively realised by the duty bearer (the State), its core obligation is to mitigate and alleviate hunger. The Committee on Economic Social and Cultural Rights outlines the normative content of the right to adequate food or food security. The Committee stipulates that the adequacy of food is determined by a myriad of factors such as the prevailing social, economic, cultural, climatic, and ecological conditions. The concept of sustainability which is intrinsically linked to food security infers the notion of long-term availability and access.¹⁰⁷ Therefore where such availability is threatened, the State must take steps to promote, protect and fulfil the right to food security through viable means available at its disposal.

In Zimbabwe, Section 77 of the Constitution stipulates that everyone has the right to safe, clean and potable water and sufficient food. The State has the duty to take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of this right. The concept of progressive realisation gives States considerable leeway and discretion in deciding what steps to take to address issues such as group or target prioritisation or budget allocation. There are however, core minimum obligations that the State is mandated to adhere to in the progressive realisation of such rights. In particular, it has to

¹⁰⁷ Committee on Economic Social and Cultural Rights, General Comment No. 12 para 7.

show the steps it has taken to realise the right to adequate food and ensure that there is food security, which in agrarian communities is threatened by climate change.

The “progressive realisation” obligation is different from the wording of civil and political rights that places an immediate duty on the State to protect, promote and fulfil those particular rights and whose non-compliance is a gross violation of human rights. This is attributed to the fact that ESC rights are resource-intensive and have budgetary implications. Budgetary constraints are a bleak reality, particularly in an economy such as Zimbabwe. Therefore, a gap remains between the State’s obligations in international human rights law, constitutional and statutory mandates, and the reality of climate change and climate action that needs financing in order to promote and protect food security. Through the findings of this research, it can be said that the State can take concrete and conclusive steps to leverage support from the private sector through PPPs towards gender equitable climate action.

The use of PPPs as a funding mechanism for the national development agenda has been recognised in the NDS1.¹⁰⁸ In climate finance, PPPs can be defined as interactions between public and private financial institutions for the delivery of climate finance.¹⁰⁹ PPPs aim to provide public service delivery and, while they seek to benefit from mutually beneficial partnerships, they remain founded on public oversight. They provide frameworks that establish public leadership and accountability in tackling climate change, while enabling the ownership of certain components of climate finance to be transferred to private hands. Normally, PPPs are understood to incorporate three key elements consisting of “formalised partnership defining the respective roles and responsibilities of public and private actors; risk-sharing among public and private actors; and financial reward for private parties, in line with contractual conditions and risk-sharing arrangements.”¹¹⁰

In other jurisdictions, climate finance has been effectively mobilised through PPPs. For example, the GET FiT program, implemented in Uganda, illustrates how PPPs can support in-country risk mitigation and facilitate private investments in renewable energy. In addition, The Moroccan *Ouarzazate* solar project illustrates how PPPs can serve effective renewable energy

¹⁰⁸ Government of Zimbabwe, *supra* note 2 at p. 227 para 891.

¹⁰⁹ A Gardiner *et al* ‘Public-Private Partnerships for Climate Finance’ *University of Cambridge & ECOFYS* (2015) pp. 10 – 15.

¹¹⁰ *Ibid.*

project development under public leadership.¹¹¹ In Zimbabwe, through the IDBZ, AFC and ZWMB and other private sector institutions, PPPs can partner with the State to build resilience in communities through funding small-scale farmers. This can be done while also ensuring that they get return on investment through new technologies and knowledge building. This will lead to the effective capacitation of the communities that are benefitting, particularly women small-holder farmers, to ensure favourable agricultural outcomes and food security. In this instance, the State has a role to ensure that gender is a key consideration through incentives such as vulnerability reduction points (resulting in tax breaks), which attract the private sector into PPPs that reduce vulnerability of women small-holder farmers to climate change.

4.5. *The Role of the State in Sustainable Banking*

The findings of the research established that through progressive policy enactment and policy action, the State needs to take a more active stance in ensuring that the private sector participates in sustainable development in the face of climate change. This can be through the facilitation of dialogue between the State and financial institutions such as banks, to be more involved in resource mobilisation of climate finance in the country. As such, the role of the State is to stimulate, facilitate, monitor and actively coordinate the contribution of banks and other private institutions towards gender-sensitive climate action, including climate finance.

4.6. *Channelling Climate Finance through Green Bank Models*

The Paris Agreement opened possibilities for non-State actors to provide climate finance. On the side-lines of the official negotiations, private providers such as private banks, insurers, institutional investors or other private initiatives also pledged funds to support the creation of green banks.¹¹² The Infrastructure Development Bank of Zimbabwe seeks to be the first green bank in Zimbabwe. Other green banks in Africa include the Development Bank of Southern Africa and the Morocco Green Bank. These are dedicated to green investment and provide a market-based solution to addressing the climate investment gap.

¹¹¹ *Ibid* p. 13.

¹¹² V. Gundu-Jakarasi 'Climate Change Financing: Reflections from a Zimbabwean Context' in T. Murombo, M. Dhliwayo and T. Dhlakama (eds), *Climate Change Law in Zimbabwe: Concepts and Insights* (Konrad Adenauer Foundation, Harare, 2019) pp. 243 -253.

Green model banks are also designed to maximise total climate investment by leveraging limited public funds with far greater local or foreign private investment. Green Banks typically utilise innovative finance to address barriers to investment such as high transaction costs, real and perceived risks, regulatory uncertainty, currency and political risk, weak enabling environment, insufficient bankable project pipelines and shortage of project developer expertise.

Gundu-Jakarasi postulates that some of the key elements of a Green Bank model include an in-country dedicated climate finance entity that uses public and private investment to catalyse and crowd in private investment¹¹³. In addition, the model is market responsive and develops innovative finance instruments to mitigate risks and enable first-of-a-kind investments.¹¹⁴ It is however imperative to add that a Green Bank Model must include the aspect of gender equitability as a key consideration in its model for sustainability.

5. Viable and Practical Solutions Based on Opportunities and Challenges Rooted in Women's Lived Realities

5.1. Cohesive Multi-Sectoral and Multi-scalar Change

The State machinery must be premised on the pillars of equality and non-discrimination, participation and accountability. Furthermore, the carbon tax resources must be channelled from the Ministry of Finance to EMA, which will expend these resources towards mitigation and adaptation projects across the nation and in adherence with its in-house Gender Policy.

There must be cohesiveness between CCMD, Ministry of Agriculture, Agritex, Gender Commission, Ministry of Environment and Women's Affairs Department to build the capacity of female smallholder farmers. Gender training and refresher training must be embarked on from time to time to ensure that key personnel are knowledgeable on gender issues embedded in climate change response, CSA, food security and sustainable livelihood initiatives.

The private sector must also go beyond corporate social responsibility to assist in the capacity building of communities particularly women in order to protect their food security and livelihoods through prioritised lending and crafted green products in order to contribute to climate action. The role of banks and financial institutions includes the development of

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

innovative financial products, prioritised lending schemes and financial advisory services that are crafted and targeted towards gender-sensitive climate change adaptation. Banks need to respond to the context in which they operate to respond to contemporary needs and turn towards sustainable banking models.¹¹⁵

Lastly, the most important pillar is that the communities must take all necessary steps within their power to be self-sufficient, capable and assertive. This also means that women's role as agents of change in adaptation and resilience is to be acknowledged and recognised. Communities together with their leaders must truly reflect and self-introspect on socio-cultural practices and customs that are no longer serving the needs of the community, serving as handicaps to transformative development and adapting to climate change.

5.2. *Enhancing Financing and Funding Options for Women through PPPs*

There is a need to go beyond the traditional banking models in extending loan facilities to women especially those that reside in the rural areas as female smallholder farmers. The State and private entities must make strategic partnerships through PPPs so as to embark on specialised initiatives that offer non-formal credit facilities with favourable interest rates for women to engage in CSA and without the pre-requisites such as collateral and pay slips

5.3. *Creation of a National Climate Fund*

There is a need to create a National Climate Fund (NCF) through nationally owned funds collected from a variety of sources (including the private sector). The NCF needs to be backed by a robust Climate Change Act that makes provision for coordination, implementation, accountability, reporting as well as monitoring and evaluation of all projects.

5.4. *Green Banking Model*

The State must make provision for the establishment of green banks through statutory and policy means. The State can also introduce incentives such as green points and tax breaks for banks that adopt the green banking models. This is important because green banks are

¹¹⁵ J. J Bouma (ed) *et al* Sustainable Banking: the Greening of Finance (Greenleaf Publishing & Deloitte & Touche, Sheffield, 2001) pp. 21 -22.

predicated on sustainability and sustainable development through green investment and the provision of a market-based solution to address the climate investment gap on a sustainable basis. They are also designed to maximise total climate investment by leveraging limited public funds with far greater local or foreign private investment. Green banks typically utilise innovative finance to address barriers to investment such as high transaction costs, real and perceived risks, regulatory uncertainty, currency and political risk, weak enabling environment, insufficient bankable project pipelines and shortage of project developer expertise. This will see previously vulnerable groups such as women small-holder farmers accessing climate finance and green products on an equitable basis with others.

5.5. *Devolution and Decentralisation of Local Government*

As set out in the NDS1, the State must put in place organisational structures that allow citizens to participate in development planning, consistent with the Constitution of Zimbabwe that compel devolvement of powers and responsibilities to competent Provincial/ Metropolitan Councils and Local Authorities. Devolution seeks to make the system of governance community-based and people-centred by enhancing community participation in making decisions on local development issues that affect them such as climate change. Such decentralisation is a key feature and strategy for non-discriminatory and just governance as well as inclusive and transformative socio-economic development necessary for climate financing.

5.6. *Establishment of Evidence-Based Climate Action to Address Gender Gaps in Climate Finance*

The relevant departments such as the Ministry of Finance, Ministry of Justice, Legal and Parliamentary Affairs, Ministry of Environment, Climate Change, Tourism and Hospitality Industry and Ministry of Women Affairs, Community, Small and Medium Enterprises should make effective use of the Climate Change Steering Committee and engage in impactful field research which informs situation analysis that is accurate and assist in policy action including budgeting that responds better to the needs of men and women. The Zimbabwe Vulnerability Assessment Committee (ZIMVAC) which works on disaggregated data based on disability, gender and employment status must also be involved in the establishment of the evidence base regarding the adaptive capacity of female smallholder farmers in the face of climate change. This is pivotal in unearthing the extent of vulnerability and the formulation of adaptive

strategies and adequate climate finance that is reflective of the needs of women, taking cognizance of the historical and existing systematic and structural barriers that inhibit them from fully participating in climate action.

5.7. *Recognition and Financing of Indigenous conservation and adaptation methods*

Traditional methods of conservation must be incorporated into mainstream environmental management principles to enable local people, particularly women to identify with them and absorb them. As such, banks and financial institutions must be incentivised to offer green products that are inclusive of indigenous conservation and adaptive methods in vulnerable communities with a special focus on gender. Such incentives can include endorsements as designated authorities that can receive climate finance from global funds such as the Adaptation Fund, Global Environmental Facility (GEF) and the Green Climate Fund.

5.8. *Legal and Policy Reform*

Legal and policy reform is imperative to create supporting and enabling legal and policy frameworks for gender-responsive mechanisms. The GAP must be backed or supported by an enabling Climate Change Act which is gender responsive and makes provision for substantive gender equality by stipulating special initiatives for small-holder farmers, among others. These will form the basis and framework for developmental programs with respect to climate action based on gender equality and equity. Moreover, it is important to note that enabling legal and policy frameworks provide justification for budgetary allocations to gender-responsive climate adaptive initiatives.

5.9. *Alleviating harmful cultural practices and socio-economic barriers*

There is a need to make continuous efforts through re-socialisation, education, advocacy, gender training and awareness raising to align socio-cultural norms and customary law to reflect the spirit and purpose of the Constitution and human rights. This can be done through engaging traditional leaders at the local and national levels. There should be an emphasis on the role of the courts to develop customary law which is embodied in case law to reflect and preserve human rights and constitutional values.

5.10. *Substantive Participation and Inclusion of Women in Climate Action*

It should be acknowledged that women are not helpless victims but effective partners in ensuring effective climate change adaptation strategies as ‘environmental stewards’. The inclusion and participation of women in the formulation of climate action will pave the way for the recognition of indigenous knowledge on adaptive, conservative and sustainable use of the available natural resources and encourage the fusion of new technology in CSA practices and indigenous traditional in lieu of climate change impacts.

Women must also be included in decision-making positions, particularly within the food systems spheres which are male-dominated and as such not gender-responsive to the needs of women. These gender-responsive considerations would especially address their heightened risk of food insecurity and unstable livelihoods, whereby decision-makers tend to focus more on commercial farming enterprises under the misconception that these enterprises contribute more toward economic development. This leaves behind the small-holder farmer who has the ability to adapt faster than commercial farmers, thereby ensuring the food security of a substantial number of communities in Zimbabwe.

6. Conclusion

Climate change reinforces the existing vulnerabilities of women as female smallholder farmers. The lack of gender sensitivity in CSA capacity-building planning, implementation and policy action serves to further diminish the adaptive capacity of women. This is reinforced by the inequitable gendered division of labour within the home that is skewed against women, which also affects their decision-making power when it comes to their small-holder farming endeavours and inequitable access to credit facilities elevates the risk to their food security and livelihoods.

In Zimbabwe, there is not much climate finance derived from private sector sources such as banks and other financial institutions. The banking landscape remains mostly traditional requiring immovable property as collateral and proof of employment as pre-requisites for women to access credit. Although private banks have stated that they have not received adequate support for accreditation to receive climate finance from global funds, the banking models themselves need to turn towards sustainability and investment in green products and

investment in projects that build community resilience. As such women's access to resources including climate finance remains gendered, which affects their adaptability to climate change with significant impact on their food security. While other statutory bodies such as the IDBZ and the ZWMB have deviated from the norm in a bid to be more inclusive, the resources derived from these banks alone do not suffice to enable the majority of women small-holder farmers to adapt to climate change. The government needs to do more to incentivise and support the private sector through incentives PPPs, create a National Climate Fund, green bank models and regulatory frameworks that curate an enabling environment for sustainable banking that is gender sensitive. This will enable women to access climate finance in an equitable manner thus fortifying women small-holder farmers' food security and livelihoods against the threat of climate change. Women also need to be included substantively in decision-making on resilience building in the community for the success of climate action and food security in the community and beyond.

An assessment of the impact of lithium mining on the realisation of environmental rights: A case study of Bikita Minerals (Pvt) Ltd

Faith Ndlovu and Douglas Musebenzi ¹¹⁶

Abstract

This article interrogates the impact of lithium mining on the realisation of environmental rights in Zimbabwe. This brief is part of a research on how environmental rights are violated by corporates in pursuit of economic development. There is a lithium rush in Zimbabwe and this paper explores the extent to which lithium mining impacts the realisation of environmental rights. Land degradation, water pollution, air pollution and carbon dioxide emissions affect the full realisation of environmental rights. Environmental rights are governed by international, regional, national legal and policy instruments. This article examines the extent to which the legal framework for lithium mining has affected the realisation of environmental rights in Zimbabwe. A case study was carried out at Bikita Minerals through interviews with various stakeholders, including community members. Bikita Minerals was selected because of its proximity to the researchers. It is also one of the world's ten largest lithium mines by production and in Zimbabwe. It was noted that lithium mining activities negatively impact the realisation of environmental rights. Gaps in the legislative and institutional frameworks were also noted as key drivers in the violation of environmental rights in lithium mining communities.

1. Introduction

The global demand for lithium has increased substantially in recent years due to its extensive use in electric batteries.¹¹⁷ The numerous lithium extraction projects in the world are with little contemplation on the impacts of lithium extraction on the realisation of environmental rights.

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¹¹⁷ G Martina et al (2017) Lithium market research – global supply, future demand and price development *Energy Storage Materials*, 6 p171 <<https://pdf.sciencedirectassets.com/313056/>> visited on 22 January 2024; L.V.Garcia, L.V et al (2023) Lithium in a Sustainable Circular Economy: A Comprehensive Review. *Processes* 11, 418. p1 <<https://doi.org/10.3390/pr11020418>> visited on 22 January 2024; D.Calisaya-Azpilcueta I & S. Herrera-Leon & L. A. Cisternas (2020) Current and Future Global Lithium Production Till 2025, *The Open Chemical Engineering Journal*, 14 (37) pp36-51 <https://www.researchgate.net/publication/342593098-Current_and_Future_Global_Lithium_Production_Till_2025/link/5efc8156299bf18816f62025> visited on 22 January 2024.

The impact of environmental aspects on the ability to enjoy fundamental human rights is well documented.¹¹⁸ Environmental justice has revealed that the exposure to environmental harm by corporations is disproportionately spread. Environmental threats are not consistently spread across groups of people throughout the world. Age and poverty place some groups at a disproportionately higher risk to environmental harm than others.¹¹⁹ Environmental justice as a movement has shown that corporates are violating the realisation of environmental rights in mining communities.¹²⁰ Environmental degradation worldwide in general, and Africa in particular, is happening at an alarming rate. Zimbabwe is not exempt from the environmental problems besieging the world.¹²¹ Against this backdrop, this paper seeks to contribute to an enlarged understanding of the impacts of lithium extraction on rural communities *vis a vis* the realisation of environmental rights in Zimbabwe. The paper is centred on an investigation of the legal and policy frameworks on lithium extraction and to establish the extent to which the legal and policy framework in Zimbabwe is promoting the realisation of environmental rights in lithium mining areas. The investigation also focused on a case study of Bikita Minerals (Pvt) Ltd where document-based evidence was collected, through newspapers, articles and interviews. Direct observations were also carried out to determine the community's perceptions of the impact of lithium mining on the realisation of environmental rights.

¹¹⁸ B. Lewis, 'Environmental rights or a right to the environment? Exploring the nexus between human rights and environmental protection,' *MQJICEL* (2012) p36; P. Pathak, (2014) Human Rights Approach to Environmental Protection, *OIDA International Journal of Sustainable Development*, 7, (1) p17; V. Kahl (2022) A human right to climate protection – Necessary protection or human rights proliferation? *Netherlands Quarterly of Human Rights*, 40(2) p158.

¹¹⁹ M. Gochfeld & J. Burger (2011) Environmental Justice, *American Journal of Public Health*, 101(1) p53

¹²⁰ C. Mulenga (2019) "Judicial Mandate in Safeguarding Environmental Rights from the Adverse Effects of Mining Activities in Zambia" PER / PELJ (22) p1 <<http://dx.doi.org/10.17159/1727-3781/2019/v22i0a5414>> visited on 25 April 2023; S. D. Handelsman (2002) Human Rights in the Minerals Industry, Mining, Minerals and Sustainable Development, 9, p2 <<https://www.ied.org/sites/default/files/pdfs/migrate/G00531.pdf>> visited on 21 January 2024.

¹²¹ M. E. Fomonyuy & V. A. Wujung & J. U. Eleazar (2023) Environmental Degradation and Health Outcome in Sub-Sahara Africa; Does Agricultural Production Matters? *International Journal of Economics, Commerce and Management*, 11(2) p67; C.C. Eze & I.U. Nwaiwu (2012) Africa in the 21ST Century: The Challenges of Environmental Degradation, *International Journal of Environmental Sciences* Vol. 1(4) p 263; D.S. Ssekibaala & M.I. Ariffin, & J. Duasa (2022), "Economic growth, international trade, and environmental degradation in Sub-Saharan Africa", *Journal of Economics and Development*, 24(4)p293 <<https://doi.org/10.1108/JED-05-2021-0072>> visited on 21 January 2024; W. Gumindoga et al An Overview Of Environmental Management In Zimbabwe *Journal of Environmental Management in Zimbabwe* 1(1) p5; W. Zvomuya (2017) Environmental Crisis and Sustainable Development in Zimbabwe: A Social Work Perspective, *African Journal of Social Work*, 7 (2) p37.

Article 24 of the African Charter on Human and Peoples' Rights (ACHPR), to which Zimbabwe is a party, provides that all peoples shall have the right to a general satisfactory environment favourable to their development.¹²² Environmental rights are protected in terms of section 73 of the 2013 Zimbabwean Constitution's Declaration of Rights.¹²³ Despite the existence of these vibrant legal instruments, little has been done to capacitate citizens to exercise the rights enshrined.¹²⁴ Sustainable development can be attained through the justification of heightened awareness to protect the environment.¹²⁵ The United Nations General Principles on Business and Human Rights are grounded in the recognition of States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms.¹²⁶ Businesses have also expanded their efforts in implementing the United Nations General Principles on Business and Human Rights.¹²⁷

This article is divided into five sections. The first part provides an introduction, research questions and methodology. The second part explores the constitutional and national legal framework for environmental rights in the mining sector. The third part focuses on environmental challenges in the lithium mining sector in Zimbabwe. The fourth section provides a case study analysis of the Bikita Minerals (Pvt) Ltd on how its lithium mining impacts the realisation of environmental rights. It discusses the findings of the research and provides recommendations to address the observed challenges. The fifth section concludes the paper.

¹²² Article 24 of the African Charter on Human and People's Rights.

¹²³ Section 73 of the Constitution of Zimbabwe Amendment Number 20.

¹²⁴ T. Madebwe, 'A rights-based approach to environmental protection: The Zimbabwean experience,' 15, *African Human Rights Law Journal*, (2015) pp110-128 <<http://dx.doi.org/10.17159/1996-2096/2015/v15n1a5>> visited on 25 April 2023.

¹²⁵ T. Murombo, 'The utility of environmental rights to sustainable development in Zimbabwe: A contribution to the constitutional reform debate', *African Human Rights Law Journal* (2011) p121.

¹²⁶ United Nations Office of the High Commissioner for Human Rights, 'Guiding Principles on Business and Human Rights, Implementing the United Nations Protect, Respect and Remedy Framework', <https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en>, visited on 20 April 2023.

¹²⁷ M. M. Barnes (2018) The United Nations guiding principles on business and human rights, the State Duty to protect human rights and the State-business nexus, *Brazilian Journal of International Law*, p43 <<https://www.jus.uniceub.br/rdi/article/viewFile/5476/3974>>, visited on 20 January 2024; J. G. Ruggie & J. F. Sherman (2017) The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale, *The European Journal of International Law* 28 (3) p922; R.L. Wolfstetter (2022) Business and Human Rights Regulation After the UN Guiding Principles: Accountability, Governance, Effectiveness. *Human Rights Review*, 23(1) p1. <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8919353/>> pp1-17 visited on 20 January 2024.

1.1 Research Questions

The Main Research Question

To what extent does the legal framework promote the realisation of environmental rights in lithium mining in Zimbabwe?

Sub- Research Questions

- 1) What is the Zimbabwean legal framework for environmental protection in the lithium mining sector?
- 2) What are the environmental challenges in lithium mining?
- 3) How has lithium mining at Bikita minerals (Pvt) Ltd impacted the realisation of environmental rights of the local community?

1.2. Research Methodology

The data collected for this study was obtained from doctrinal legal research and empirical research. The doctrinal approach was used to analyse the national legal framework on environmental rights. A Human Right Based Approach (HRBA) was embraced in the study to ascertain the relevant human rights legal frameworks. The HRBA was used to identify rights-holders and duty-bearers in the realisation of environmental rights in lithium mining communities. Human rights approaches are predominant in environmental protection research.¹²⁸ A HRBA is a useful complement to any environmental law regulatory framework. It was prudent to examine the realisation of environment rights through the use of a HRBA.¹²⁹ The HRBA seems to be an appropriate means of enhancing environmental protection and improvement of the quality of the human environment.¹³⁰ For the Bikita Minerals (Pvt) Ltd case

¹²⁸ B. Mia, & K. S. Islam, 'Human Rights Approach to Environment Protection: An Appraisal of Bangladesh' 22 *Journal of Law, Policy and Globalization* (2014) 59 59-64.

¹²⁹ L.K Masekese 'A human rights-based approach to implementing Target 11.6 of Sustainable Development Goal 11 in Zimbabwe', 22 *African Human Rights Law Journal* (2022) 241-265 <<http://dx.doi.org/10.17159/1996-2096/2022/v22n1a10>> visited on 15 July 2023.

¹³⁰ M. Hana, Human Rights Approaches to Environmental Protection at the International Level and Their Application in the Czech Republic (November 1, 2009). 11 *Common Law Review*, (2010) Environmental Law, <<https://ssrn.com/abstract=2236468>> visited on 15 July 2023.

study, a qualitative research approach was employed to gather data through the use of interviews and direct observations and the use of documentary evidence such as newspapers and research articles. A total of thirty face to face interviews comprising of thirteen (13) men and seventeen (17) women were conducted in ward 10 which has an estimated population of 6,547.¹³¹ The researchers adopted both purposive and convenience sampling. The purposive sampling was targeted at institutions such as the Environmental Management Agency and Bikita Mining Officials as well as key leaders such as the local Chief Marozva. On the other hand, convenience sampling was used to interview local community members. Convenience sampling is whereby the researcher simply selects the sample at their own convenience.¹³² Therefore, the researchers targeted members who were at a local business centre and nearby homesteads. Respondents were asked structured questions on their experiences and perceptions about the adverse environmental impacts caused by lithium mining in the Bikita community.

1.3. Conceptual Framework

The study was anchored on environmental justice. Environmental justice is the fair and meaningful involvement of all people with respect to the development, implementation and enforcement of environmental laws, regulations and policies.¹³³ Environmental justice aims to improve institutions so that communities are compensated for enduring environmental harms.¹³⁴ Health is the main focus of environmental justice.¹³⁵ In addition, environmental justice also involves empowered people in relations of solidarity and equity with each other and in non-degrading and positive relationships with the environment.¹³⁶ The environmental justice analysis perspective was used to establish the extent to which the legal framework promotes the realisation of environmental rights in lithium mining in Zimbabwe, focusing on Bikita Minerals (Pvt) Limited. Community members were interviewed in order to ascertain the impact of lithium mining on the violation of their environmental rights. Direct observations also assisted the researchers in ascertaining the extent of environmental damage in the area.

¹³¹ World Food Programme, (2023) Bikita District Food and Nutrition Security Profile <<https://fnc.org.zw/wp-content/uploads/2023/04/Bikita-District-Profile>> accessed 20 January 2024.

¹³² E. Rafeedalie (2019) Research: Population and Sample. < <https://tophat.com/marketplace/social-science/education/course-notes/oer-research-population-and-sample-dr-rafeedalie/1196/>> accessed 24 January 2024.

¹³³ J.J. Manzano & N. Chalifour & L.J. Kotze 'Energy Governance and Sustainability, (Edward Elgar, Cheltenham, 2016) p83.

¹³⁴ Noonan, D S. 2008. "Evidence of Environmental Justice: A Critical Perspective on the Practice of EJ Research and Lessons for Policy Design." ,89(5) *Social Science Quarterly* (2022) p1123, 1154 - 1174.

¹³⁵ R. White, 'Environmental Harm: An eco-justice Perspective, (Policy Press, Bristol, 2014) p47.

¹³⁶ J. Dugard & A.L. Clair & s. Gloppen, 'Climate Talk, Rights Poverty and Justice, (Juta, Claremont, 2013) p194.

2.The Zimbabwean Legal Framework for Environmental Protection in the Lithium Mining Sector

2.1. The Constitutional Framework

Zimbabwe adopted a new Constitution through the Amendment (No.20) Act of 2013, which introduced environmental rights under section 73. These rights were absent from the previous Lancaster House Constitution but were outlined in section 4 of the Environmental Management Act,¹³⁷ hereinafter (EM Act). The provisions of section 4 of the EM Act and section 73 of the Constitution are identical and the presumption is that the meaning accorded to them is the same. There are several factors which could have influenced the inclusion of environmental rights in the 2013 Constitution. Some of the reasons were to correct the shortcomings of the Lancaster House Constitution. It is also possible that previous experiences, such as the 2008 cholera outbreak, which resulted in the death of thousands of people, could have helped in awakening people to the dire need for environmental rights.¹³⁸ COPAC statistics show that out of 1946 wards in the country, 951 (48.87 per cent) wards supported the idea of a right to a healthy environment, which is proof that a considerable portion of the country's population appreciated the need for a rights-based approach to environmental protection.¹³⁹

The Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of its inconsistency.¹⁴⁰ However, Madebwe argues that the EM Act remains the leading law in terms of environmental protection and laws dealing with natural resources.¹⁴¹ Thus, section 2 establishes the Constitution as a superior law generally, while section 3 of the EM Act makes it the framework law in terms of environmental management.¹⁴² However, in respect of environmental rights, the Constitution supersedes the EM Act. For present purposes, the environmental clause under section 73 of the Constitution shall be referred to as the right to a healthy environment. It reads as follows:

- (1) Every person has the right
 - a) To an environment that is not harmful to their health or well-being; and

¹³⁷ Section 4 of the Environmental Management Act [Chapter 20:27].

¹³⁸ C.B. Soyapi *The role of the judiciary in advancing the right to a healthy environment* p. 230.

¹³⁹ Ibid.

¹⁴⁰ Section 2 of the *Constitution of Zimbabwe Amendment 20*.

¹⁴¹ T. Madebwe 'A rights-based approach to environmental protection: The Zimbabwean experience' *African Human Rights Law Journal* (2015)p.119.

¹⁴² Section 3 of the EM Act.

- b) To have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that;
 - i) Prevent pollution and ecological degradation;
 - ii) Promote conservation; and
 - iii) Secure ecologically sustainable development and the use of natural resources while promoting economic and social development.
- (2) The State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of the rights set out in this section.

The constitutional environmental clause enshrined in section 73 encompasses five sub-elements which could be read as key environmental norms.¹⁴³ These include, sustainable development, the principle of wise use intra-generational equity, the prevention of pollution and the progressive realization of rights.¹⁴⁴ It is also important to note that this is a substantive right, and it matches very well in terms of its content, scope and extent with the equivalent in other jurisdictions.¹⁴⁵ The section resembles section 24 of the 1996 Constitution of the Republic of South Africa.¹⁴⁶ The constitutional protection of environmental rights is one of the vital strategies for realising environmental protection and sustainable development in developing countries.¹⁴⁷ There are also several advantages attached to the inclusion of environmental rights in the Constitution. Perhaps the advantages are best summarised as resulting in stronger environmental laws and policies, improved implementation and enforcement, greater citizen participation in environmental decision-making, increased accountability, reduction in instances of environmental injustice, and the creation of a level playing field with civil, political and economic, social and cultural rights.¹⁴⁸ Constitutionalising environmental rights is no doubt a major development in the history of environmental governance and natural resources management in the country.¹⁴⁹ It has also been argued that the inclusion of environmental rights in the Constitution does not only ensure protection at the highest level of the law, but also places environmental issues on an equal level of concern as other human rights.¹⁵⁰

¹⁴³ J. Tsabora (2019) in *Selected Aspect of 2013 Zimbabwean Constitution and the Declaration of Human Right*

¹⁴⁴ *Ibid* p. 3.

¹⁴⁵ M. Dhliwayo, A *Critical Examination of the Scope, Content and Extent of Environmental Rights in the Constitution of Zimbabwe* 65.

¹⁴⁶ T.R. Tanyanyiwa 'SEC 73: A New Hope for Environmental Justice in Zimbabwe' p.3 <www.mushoriwapasi.co.zw/wp-content/uploads/2018/02/Sec.73-A-New-Hope-for-Environmental-Justice-in-Zimbabwe>, accessed 15 August 2023.

¹⁴⁷ T. Murombo, 'The utility of environmental rights to sustainable development in Zimbabwe: A contribution to the constitutional reform debate', *African Human Rights Law Journal* (2011) pp. 120-146.

¹⁴⁸ Dhliwayo, *supra* note 30, p.50. Also see Kotze 2014 *The Anthropocene Review* 253.

¹⁴⁹ I. Chirisa & A. Muzenda 'Environmental Rights as a Substantive Area of the Zimbabwean Constitutional Debate: Implications for Policy and Action' *Southern Peace Review Journal* (2013) p.104.

¹⁵⁰ Murombo, *supra* note 32, p. 125.

However, the progressive realisation clause inserted in terms of section 73(2) can be a drawback and may militate against the effective realisation of environmental rights. Section 73(2) provides that "the State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the 'progressive realisation'" set out in the section.¹⁵¹ Under international law, the concept of progressive realisation of rights subject to the availability of resources is common with regards to economic, social and cultural rights (ESCR).¹⁵² These rights can be distinguished from civil and political rights whose realisation is immediate. Fulfilling ESCR obligations requires economic resources, therefore financial constraints faced by many developing countries and Zimbabwe in particular may make simultaneous and immediate fulfilment of all ESR [economic and social rights] obligations impossible.¹⁵³ Consequently, it is conceivable that attention will be given to the 'pure' socio-economic interests such as access to housing, while the right to a healthy environment is neglected.¹⁵⁴

The case of *Manyame Park Residents v Chitungwiza Municipality*,¹⁵⁵ is illustrative of how the progressive realisation clause may militate against effective realisation of environmental rights. In this case, ZELA sued the Chitungwiza municipality for discharging raw sewage into the Manyame River, which, among other uses, was a source of domestic water in Chitungwiza town. ZELA sought an order to compel the Chitungwiza municipality to construct adequate sanitation systems, specifying that the municipality negligently discharged raw sewage into a public stream and a residential area in violation of the EM Act and the people's right to a safe environment.¹⁵⁶ The court granted the order as prayed for, since the Municipality admitted to causing pollution. Regrettably, the High Court accepted the Municipality's submission that it had no resources to remedy the sewage problems. Apparently, the court considered the serious economic challenges that confronted the country at that time.¹⁵⁷

¹⁵¹ S 73(2) *Constitution of Zimbabwe Amendment (No 20)*.

¹⁵² Dhliwayo, *supra* note 30, p.65.

¹⁵³ Soyapi, *supra* note 23, p.232.

¹⁵⁴ *Ibid*.

¹⁵⁵ *Manyame Park Residents v Chitungwiza Municipality* HH 11152/2003.

¹⁵⁶ Soyapi *supra* note 23 p. 236.

¹⁵⁷ The Inter-Ministerial Task-Force on Alignment Legislation (IMT) Technical Committee- Ministry of Environment, Water and Climate *Draft Discussion Paper on the Review and Gap Analysis of the Environmental Management Act* [Ch 20:27] 11.

Besides section 73, it is important to note that there are also other constitutional provisions which can help facilitate the realisation of environmental rights. For instance, section 62 of the Constitution grants every citizen the right to access to information.¹⁵⁸ This provision improves environmental protection in the sense that "access to information empowers people to use the knowledge gained to vindicate their right to a healthy environment before a court of law."¹⁵⁹ The provision is also in line with Principle 10 of the *Rio Declaration on Environment and Development*, which calls for "access to information, public participation in the policy and decision-making process, and effective access to judicial and administrative proceedings."¹⁶⁰ Furthermore, section 85 of the Constitution provides access to the courts for any individual whose rights have been infringed. It stipulates that:

- (1) Any of the following persons: namely
 - (a) any person acting in their own interests
 - (b) any person on behalf of another person who cannot act for themselves
 - (c) any person acting as a member; or in the interests, of a group of class of persons
 - (d) any person acting in the public interests
 - (e) any association acting in the interests of its members
- is entitled to approach a court, alleging that a fundamental right of freedom enshrined in this Chapter has been, is being or is likely to be infringed, and the court may grant appropriate relief, including a declaration of rights and an award of compensation.¹⁶¹

This section therefore widens *locus standi* to include public interest litigation (PIL), as action against the violation of a fundamental right can be taken by anyone on his or her own behalf, on behalf of others, or in the public interest. If read in conjunction with section 73, these rights ensure that crucial substantive and procedural rights for enjoying the right to a healthy environment are available to all citizens, with the result that the issue of *locus standi* ceases to be a factor in accessing environmental justice.¹⁶² Furthermore, section 46(c) of the Constitution provides that "when interpreting Chapter 4 of the Declaration of rights, a court, tribunal, forum or body must take into account international law and all treaties and conventions to which Zimbabwe is a party." Zimbabwe is a party to various treaties and conventions that protect the environment and by incorporating the above provision in the Constitution, it has shown its eagerness to alleviate environmental issues in a wider and richer sense. This constitutional provision gives weight to our environmental jurisprudence and in instances where our law is lacking, courts may import or draw inspiration from other jurisdictions.

¹⁵⁸ S 62 *Constitution of Zimbabwe Amendment* (No 20).

¹⁵⁹ Dhliwayo, *supra* note 30 p.71.

¹⁶⁰ See principle 10 of the *Rio Declaration*.

¹⁶¹ Section 85 *Constitution of Zimbabwe Amendment* (No 20).

¹⁶² Madebwe, *supra* note 24 p. 121; Also see Tanyanyiwa, *supra* note 31, p.7 & Dhliwayo, *supra* note 30, p.70-71.

To complement this, chapter 12 of the Constitution provides for 'Independent Commissions Supporting Democracy' and it establishes the Zimbabwe Human Rights Commission (ZHRC) under Part Three.¹⁶³ Citizens whose right to a healthy environment has been violated can also approach the ZHRC to lodge a complaint against the perpetrators. For instance, sometime in June 2017, the ZHRC undertook an investigation into a complaint lodged by Albert Chiwenga on behalf of the Mazvihwa community in Zvishavane.¹⁶⁴ The complaint involved allegations of violation of environmental rights and the right to health by Murowa Diamonds (Pvt) Ltd.¹⁶⁵ The complainants were community members residing near Murowa Diamond Mine. They alleged that Murowa Diamond Mine had been polluting the environment in Mazvihwa community due to its mining activities, in particular mine blasts, which produced excessive dust.¹⁶⁶ The complainants further alleged that some of their houses were cracking because of the blasting that was taking place at the mine.¹⁶⁷ The ZHRC did some investigations from which they discovered among other things, that the allegations of the cracking of houses and dust emissions could be substantiated, although it was necessary to engage independent consultants to assess, monitor and verify the claims made by the complainants.¹⁶⁸ The independent consultants were to further assess and monitor the immediate, medium- and long-term implications of the blasting and the dust emissions on the health of the affected community.¹⁶⁹

To this end, it can be concluded that the inclusion of the right to a healthy environment in section 73 of the 2013 Constitution stands as a momentous achievement which affirms the country's recognition of the significant role that environmental rights play in Zimbabwe's constitutional framework.¹⁷⁰ However, 'having comprehensive constitutional legal provisions is one thing, and compliance and enforcement remain another.'¹⁷¹

¹⁶³ Section 242 *Constitution of Zimbabwe Amendment* (No 20).

¹⁶⁴ *Mazvihwa Community and Murowa Diamonds Pvt Ltd* file ref ZHRC/CI/0149/16 <http://www.zhrc.org.zw/download/mazvihwa-community-v-murowa-diamonds/> visited on 23 July 2023.

¹⁶⁵ *Ibid* P. 1.

¹⁶⁶ *Ibid.*, P. 2 para 2(a).

¹⁶⁷ *Ibid.*, p. 2 para 2 (d).

¹⁶⁸ *Ibid.*, p. 15 para 9.

¹⁶⁹ *Ibid.*, p.15 para 9.

¹⁷⁰ Madebwe, *supra* note 26, p.128.

¹⁷¹ Dhliwayo *supra* note 30, p. 49.

2.2 *The National Legislative Framework*

The Environmental Management Act,¹⁷² the Mines and Mineral Act¹⁷³ and the Water Act¹⁷⁴ are the key legislative instruments dealing with environmental protection in the mining sector in Zimbabwe. The regulation of lithium mining is also regulated by two statutory instruments dealing with lithium which were recently issued in December 2022. These instruments were intended to ban ore exports and compel local processing under Statutory Instrument 213 of 2022,¹⁷⁵ which was subsequently repealed and replaced by Statutory Instrument 5/ 2023.¹⁷⁶

The EM Act is the principal framework environmental legislation governing environmental conservation and protection in Zimbabwe and it remains the leading statutory instrument in terms of Zimbabwean environmental law and laws dealing with natural resources.¹⁷⁷ Thus, section 3(2) of the Act provides that if any other law is in conflict or inconsistent with the Act, the Act would prevail.¹⁷⁸ Part II of the Act provides for the general principles of environmental management and the functions of the Minister. Section 4 creates environmental rights and principles for environmental management.

As previously mentioned, this provision is identical to the constitutional provision in section 73. Hence, the presumption is that the meaning accorded to them is the same. Remarking on the relationship between the Constitution and EM Act, Tsabora argues that "despite pre-dating the Constitution which houses the environmental right clause, there is harmony between the norms in the environmental right clause of the Constitution and environmental rights provisions in section 4 of the EM Act."¹⁷⁹

Section 9 of the Act establishes the Environmental Management Agency (EMA), which is the statutory body responsible for enforcing the law. The creation of the EMA ushered in a new dispensation in the manner in which Zimbabwe's natural resources had to be managed, with

¹⁷² Environmental Management Act (Chapter 20:27).

¹⁷³ Mines and Minerals Act (Chapter 21:05).

¹⁷⁴ Water Act (Chapter 20:24).

¹⁷⁵ The Base Minerals Export Control (Lithium Bearing Ores and Unbeneficiated Lithium) Order, 2022, Statutory Instrument 213/2022.

¹⁷⁶ Statutory Instrument 5 of 2023-Base Minerals Export Control (Unbeneficiated Base Mineral Ores Order, 2023.

¹⁷⁷ Madebwe, *supra* note 26, p.119.

¹⁷⁸ S 3 Environmental Management Act (Chapter 20:27).

¹⁷⁹ Tsabora, *supra* note 28.

the emphasis on how the resources should be conserved.¹⁸⁰ The EMA is structured into two departments responsible for carrying out the EMA's core business. One is the Environmental Protection Department which is responsible for enforcing environmental legislation and the setting up of environmental quality standards. The other is the Environmental Management Services Department, which is mandated to collect, produce and disseminate information to the society through the Environmental Education and Publicity Unit and the Environmental Planning and Monitoring Unit.¹⁸¹ The functions and powers of the EMA are provided in section 10 of the Act. These include formulating quality standards on air, water, soil, noise, vibration, radiation and waste management, among other issues.¹⁸²

Part V of the Act establishes the Environmental Management Board which is responsible for managing and controlling the operations of the EMA.¹⁸³ There are also a number of Statutory Instruments (SIs) which have been enacted to reinforce the provisions of the Act. These include the Environmental Management (Control of Alluvial Mining) Regulations,¹⁸⁴ the Environmental Management (Effluent and Solid Waste Disposal) Regulations,¹⁸⁵ the Environmental Management (Air Pollution Control) Regulations,¹⁸⁶ the Environmental Management (Hazardous Waste Management) Regulations,¹⁸⁷ the Environmental Management (Environmental Impact Assessment and Ecosystems Protection) Regulations,¹⁸⁸ and the Environmental Management Forest (Control of Firewood, Timber and Forest Produce) Regulations,¹⁸⁹ to mention a few. Part XI of the Act also provides for environmental impact assessments (EIA), and the audit and monitoring of projects. The first schedule of the Act provides a list of projects which must not be implemented unless in each case the Director-General has issued a certificate in respect of the project in terms of section 100, following the submission of an EIA report in terms of section 99.¹⁹⁰ Mining is also part of the projects that

¹⁸⁰ P. Moyo *et al.* 'Press and Environmental Management Agency (EMA)'s Active Role in Reporting and Monitoring Environmental Degradation Caused by Small Scale Artisanal Gold Panning in Zimbabwe a case of Shurugwi Peri Urban' Vol.5, No.17; *Journal of Environment and Earth Science* (2015) p.99.

¹⁸¹ *Ibid.*

¹⁸² S 10 of the Environmental Management Act (Chapter 20:27).

¹⁸³ S 11 Environmental Management Act (Chapter 20:27).

¹⁸⁴ Statutory Instrument 92 of 2014.

¹⁸⁵ Statutory Instrument 6 of 2007.

¹⁸⁶ Statutory Instrument 72 of 2002.

¹⁸⁷ Statutory Instrument 10 of 2007.

¹⁸⁸ Statutory Instrument 7 of 2007.

¹⁸⁹ Statutory Instrument 116 of 2012.

¹⁹⁰ Section 97(1-3) Environmental Management Act (Chapter 20:27).

cannot be implemented without first carrying out an EIA process. It is thus a criminal offence to implement a project without first obtaining the necessary EIA certificate.¹⁹¹

It has been reported recently, that the EMA in Mashonaland East province shut down two lithium mines in Goromonzi district for allegedly operating without EIA certificates.¹⁹² In the case of *Shangani Holistic (Pvt) Ltd v Pearline Mineral Exploration (Pvt) Ltd*,¹⁹³ the court granted an interim interdict that prohibited Pearline Mineral Exploration from conducting an aeromagnetic survey over Shangani Ranch in Insiza District before carrying out an Environmental Impact Assessment (EIA). In this case, the Respondent had been granted an Exclusive Prospecting Order (EPO) in terms of the Mines and Minerals Act to conduct an aerial survey which it conducted before applying for an EIA certificate as required by the law. The court declared the conduct unlawful and ordered the permanent ceasing of all mineral prospecting or mining activities on the Shangani Ranch. The learned judge reemphasized the prerequisites of an EIA regardless of the absence of any physical prospecting. Similarly, in the case of *Debshan (Pvt) Ltd v Provincial Director, Mat South Province and Others*¹⁹⁴ it was held that an EIA certificate was a pre-requisite for obtaining a prospecting license or a mining license. In this case, the first and second respondents had opposed the application, arguing that an EIA certificate is not a pre-requisite for the issuance of a mining certificate; and as far as they were concerned, an applicant for a registration certificate is required to comply with section 45 (2) of the *Mines and Minerals Act* only.¹⁹⁵ This case therefore illustrates some of the challenges related to legislative fragmentation.

The Mines and Mineral Act (MMA), on the other hand is the principal legislation on mining in Zimbabwe and was enacted 1961. The Act provides for the procedures of obtaining mining licenses.¹⁹⁶ The MMA works hand in hand with the EM Act but in case of any inconsistencies

¹⁹¹ Section 97(2) Environmental Management Act (Chapter 20:27).

¹⁹² Zimbabwe: Two lithium mines shut down for operating without environmental impact assessment certificates Business and Human Rights Resource Centre <https://www.business-humanrights.org/en/latest-news/zimbabwe-two-lithium-mines-shut-down-for-operating-without-environmental-impact-assessment-certificates>.

¹⁹³ HC 4074/22 as reported by S Mtisi (8 July 2022) available at <https://goxi.org/blog/environmental-impact-assessments-mining-and-environmental-litigation-flashpoint> (accessed on 27 August 2022).

¹⁹⁴ (2017) ZWBHC 11.

¹⁹⁵ Mines and Minerals Act (Chapter 21:05); the section lists documents to accompany an application for registration of blocks such as a prospecting licence, a prospecting notice, and a copy of a registration notice, among others. An EIA certificate is not included in the list.

¹⁹⁶ See the preamble of the MMA

between the two, the EM Act takes precedence.¹⁹⁷ Although there is no express mention of the term EIA report in the Act, inferences can be drawn from section 159 (3)(e)(vii) which provides as follows:

- a report on the anticipated impact of mining operations on the environment and any measures to be taken to assess, prevent or minimize such impact, including proposals for—
- a. the prevention or treatment of pollution; and
 - b. the treatment and disposal of waste;
 - c. the protection of rivers and other sources of water; and
 - d. the reclamation and rehabilitation of land disturbed by mining operations; and
 - e. monitoring the effect of mining operations on the environment;

This provision is important because as provided for in section 97 of the EM Act, aggrieved parties can be brought before courts for failing to adhere to their EIA reports or not having the certificate at all and for causing damage to the environment.¹⁹⁸

It is however important to note that having been first crafted in 1961 and last reviewed in 1996, the MMA is far too outdated and needs to be reviewed in line with regional and international best practices. The MMA is oriented towards mineral resource exploitation with little or no regard to the environment. One of the chief problems stifling mining progress in the country is the archaic piece of legislation which is a weak link.¹⁹⁹ In 2015, the Mines and Minerals Amendment Bill (MMAB)²⁰⁰ was placed before Parliament to re-align the archaic MMA with best international practices and to address contemporary challenges affecting the mining sector. The MMAB presents an interesting and progressive concept whereby it places strict liability on the directors of mining companies in the event that there are any instances where their mining operations lead to environmental pollution and degradation.²⁰¹ It provides that

“Notwithstanding the provisions of the Companies Act [Chapter 24:03] the directors of a company or members of a close (Pvt) Ltd or syndicate are jointly and severally liable for any unacceptable negative impact on the environment, including damage, degradation or pollution advertently or inadvertently caused by the company or close (Pvt) Ltd or syndicate, which they represent or are represented.”

The introduction of strict liability shows the seriousness of the government in eradicating environmental degradation in the mining sector. Although this is a commendable move, it is imperative to note that, the Bill is still to be adopted into law. The MMB gazetted in February

¹⁹⁷ Section 3 of the Environmental Management Act.

¹⁹⁸ Section 97(2) Environmental Management Act.

¹⁹⁹ M. Dhliwayo (2014) A Review of Zimbabwe draft minerals Policy: Transforming comparative advantage to Competitive advantage 1.

²⁰⁰ Mines and Minerals Amendment Bill (2015).

²⁰¹ Section 257 D (3) of the MMAB.

2023 also lists lithium as a strategic mineral.²⁰² A strategic mineral is defined to mean a mineral declared by the Minister to be such in terms of section 6(2) of the Bill, that is to say, a mineral that is deemed strategic by virtue of its importance to the economic, social, and industrial or security interests of Zimbabwe.²⁰³

Having declared lithium a strategic mineral, and also in trying to deal with the rush for the mineral. The government issued SIs intended to ban ore exports and to compel local processing. To that end, SI 213 of 2022,²⁰⁴ was promulgated by the Minister of Mines on the 20th of December 2022. This SI was issued in terms of Section 3 of the Base Minerals Export Control Act,²⁰⁵ which empowers the Minister of Mines to issue orders prohibiting the export of all base minerals or of any specified base minerals from Zimbabwe to any territory. However, it is important to note that SI 213/22 was subsequently repealed and replaced by the broad ban on export of unbeneficiated base mineral ores, SI 5/ 2023.²⁰⁶ This order was also subsequently amended by SI 57/2023.²⁰⁷ In terms of which, a written permit issued by the Minister of Mines and Mining Development is required before one can export un-beneficiated base mineral ores.²⁰⁸ The Order also deals with controlling the movement of lithium ores within the country. The lithium may only be moved and sold to an Approved Processing Plant (APP).²⁰⁹ The lithium ores cannot be stored anywhere except at the mining location or the premises of an approved APP.²¹⁰ However, it is important to note that SI 5/2023 and its subsequent amendment SI 57/2023 are silent on environmental aspects of lithium mining. The policy is only concerned with the export, storage, transportation and processing of lithium bearing ores, among other things, without taking into account the environmental consequences of lithium mining on local communities.

²⁰² Second schedule of the MMB, 2022.

²⁰³ See Clause 4 of the MMB, 2022.

²⁰⁴ The Base Minerals Export Control (Lithium Bearing Ores and Unbeneficiated Lithium) Order, 2022, Statutory Instrument 213/2022.

²⁰⁵ [Chapter 21:01].

²⁰⁶ Statutory Instrument 5 of 2023-Base Minerals Export Control (Unbeneficiated Base Mineral Ores Order, 2023.

²⁰⁷ Statutory Instrument 57 of 2023. Base Minerals Export Control (Unbeneficiated Base Mineral Ores) (Amendment) Order, 2023 (No. 1).

²⁰⁸ See section 3(1) of the Statutory Instrument 5 of 2023.

²⁰⁹ See Statutory Instrument 57 of 2023. Base Minerals Export Control (Unbeneficiated Base Mineral Ores) (Amendment) Order, 2023 (No. 1).

²¹⁰ See schedule 3(2) of Statutory Instrument 57 of 2023.

The Water Act,²¹¹ deals with the use and control of water bodies and the requirements for a water permit needed in mining projects. The Act makes provision for the prevention of water pollution and the preservation of water resources.²¹² It provides that water resources management is to be in line with environmental approaches.²¹³ Section 6 (2) (b) of the Act states that when implementing any proposal for use, management or exploration of water resources, due consideration shall be given to protection, conservation and sustenance of environment. This Act is also complemented with SI 206 of 2001 which requires the ZINWA authorities to issue water permits to mining companies in tandem with their environmental impact assessment plan approved by EMA.²¹⁴ In this manner, any miner intending to carry out mining activity in the river bed must apply for a permit and the regulating officials will visit the site to establish whether the intended operation will not interfere with the river bed of a public river. Therefore, a mining company which contravenes water pollution control standards commits an offence and will be prosecuted in terms of section 57 (1) of the EM Act and be liable to a fine not exceeding US\$5,000 (or imprisonment for a period not exceeding five years) or both such fine and such imprisonment.²¹⁵

3. Environmental Challenges in the Lithium Mining Sector

3.1. *Emerging issues in Lithium Mining*

Although lithium mining has gained significant attention in recent years due to the increasing demand for lithium-ion batteries used in various applications, including electric vehicles and renewable energy storage, the lithium mining process which involves extracting the element from its natural deposits, can be difficult and hazardous.²¹⁶ The extraction process can cause deforestation and habitat destruction, water scarcity and pollution, as well as air and soil contamination.²¹⁷ This section therefore discusses the environmental impacts of lithium mining.

²¹¹ Water Act (Chapter 20:24).

²¹² See the Preamble of the Act.

²¹³ Section 67 of the Water Act, Chapter 20:24.

²¹⁴ The Water (Permits) Regulations, 2001.

²¹⁵ See section 57(1) of the Environmental Management Act.

²¹⁶ Semco Infratech Pvt Ltd How to overcome the challenges of lithium mining and its impact on the environment, <<https://www.linkedin.com/pulse/how-overcome-challenges-lithium-mining-its-impact-environment>> visited on 05 September 2023.

²¹⁷ Ibid.

3.1.1. Deforestation and Habitat Destruction

One of the primary environmental challenges of lithium mining is deforestation and habitat destruction. The extraction of lithium requires clear-cutting trees, disrupting wildlife habitats, and jeopardizing the biodiversity of an area. As a result, the loss of plant and animal species becomes a significant concern. Brooks opines that the extraction of lithium is responsible for the onset of desertification in several parts of the world and also destroys habitats and minerals that are essential for plant growth.²¹⁸

3.1.2. Water Scarcity and Pollution

Lithium extraction heavily relies on large quantities of water, leading to a potential strain on local water resources. According to Friends of the Earth Europe,²¹⁹ it is estimated that it requires as much as half a million gallons of water to produce one tonne of lithium. For instance, lithium extraction in Zimbabwe has been reported to consume millions of gallons of water putting pressure on the scarce water resources in the mining areas.²²⁰ Moreover, the chemical processes involved in lithium extraction can contaminate water sources, leading to pollution concerns and long-term ecosystem degradation.²²¹ For instance, sometime in 2016 a toxic chemical leak from the GanzizhouRongda Lithium mine caused havoc with the local system. It polluted the Liqi river resulting in mass death of fish in the river as well as killing livestock.²²²

3.1.3. Air and Soil Pollution

The extraction and processing of lithium can also result in air and soil pollution. Dust emissions containing heavy metals and other pollutants can have detrimental effects on air quality, posing

²¹⁸ E. Brooks <<https://ecojungle.net/post/lithium-extraction-environmental-impact/> 31 December 2021> accessed on 05 September 2023.

²¹⁹ Friends of the Earth Europe 2013 Less is More: Resource Efficiency through Waste Collection, Recycling and Reuse.

²²⁰ ZELA & AIEL Situational Report: Implications of the lithium mining rush in Zimbabwe: Analysis of legal developments, February 2023.

²²¹ Zheng, M The Environmental Impacts of Lithium and Cobalt Mining 2023 <<https://earth.org/lithium-and-cobalt-mining/>> visited on 23 July 2023.

²²² See <https://www.wired.co.uk/article/lithium-batteries-environment-impact>.

health risks to both human populations and surrounding wildlife.²²³ Additionally, the inappropriate disposal of waste materials can lead to the contamination of soil, affecting agricultural productivity and long-term ecological health.²²⁴ According to a report by Friends of the Earth (FoE), "lithium extraction inevitably harms the soil and causes air contamination. As demand rises, the mining impacts are increasingly affecting communities where this harmful extraction takes place, jeopardising their access to water."²²⁵

3.1.4. Carbon Footprint

The energy-intensive processes involved in extracting and refining lithium, manufacturing batteries, and transporting them globally contribute to greenhouse gas emissions.²²⁶ The carbon footprint is also increased by the cutting down of trees which takes place when clearing the land for Lithium mining thereby reducing carbon sinks. Green plants and trees act as carbon sinks as they remove excess carbon dioxide from the atmosphere during photosynthesis. This process is therefore hindered by lithium miners as they cut down trees.²²⁷

4. Bikita Minerals (Pvt) Ltd Case Study

Zimbabwe holds Africa's largest lithium reserves and is the sixth largest globally. Bikita Lithium Mine herein referred to as (BLM) is located in the southern Masvingo Province, and is Zimbabwe's largest lithium deposit.²²⁸ BLM has been in existence since 1911 and its first operation was the mining of tin.²²⁹ Bikita Mineral mine is owned by Sinomine.²³⁰ In 1950, the company started mining petalite lithium. Although Zimbabwe has been mining lithium since

²²³ Noudeng V. et al A Future Perspective on Waste Management of Lithium-Ion Batteries for Electric Vehicles in Lao PDR: Current Status and Challenges *Int J Environ Res Public Health*. (2022); 19(23): 16169.

²²⁴ Ibid.

²²⁵ M.Campbell, South America's lithium fields reveal the dark side of our electric future, <<https://www.euronews.com/green/2022/02/01/south-america-s-lithium-fields-reveal-the-dark-side-of-our-electric-future>> Visited on 13 July 2023.

²²⁶ See <https://changeit.app/blog/2021-03-26-environmental-impact-of-lithium-batteries/> accessed on 5 September 2023.

²²⁷ Ibid 82.

²²⁸ F. Carbajal Glass, Preventing Environmental Crime and Human Vulnerability through the MGPOC Framework: The Case of Zimbabwe's Lithium Industry. ,4(1) *Journal of Illicit Economies and Development*, (2022) p37 <<https://doi.org/10.31389/jied.141>> visited 14 July 2023.

²²⁹ ZELA, Implications of the Lithium Mining Rush in Zimbabwe: Analysis of Legal Developments ZELA 2023 <<https://zela.org/publications/environment/>> visited on 14 July 2023.

²³⁰ Mining Technology, China's Simone to invest \$200m at Bikita Lithium Mine in Zimbabwe, Mining Technology <<https://www.mining-technology.com/news/sinomine-bikita-lithium-zimbabwe/>> visited on 14 July 2023.

1950 through BLM, in recent years, Zimbabwe has experienced an increased interest in lithium mining activities which has seen an influx of investors and projects.²³¹

4.1. Methods of Data Collection

Qualitative data was collected through interviews and direct observation. A total of 30 respondents comprising of bothmen and women were interviewed. Respondents included Bikita Mining officials, traditional leaders, environmental regulatory authorities, and local community members. Secondary source of data was obtained from documentary evidence through desktop research.

4.2. Research findings and analysis

The overall research was centred on an investigation of the legal and policy framework on lithium extraction and to establish the extent to which the legal framework in Zimbabwe is promoting the realisation of environmental rights in lithium mining areas. The focus on Bikita Minerals (Pvt) Ltd was intended to determine the community's perceptions of the impact of lithium mining on the realisation of environmental rights.

4.2.1. Non –compliance with the law and absence of complaint mechanisms

There are major tensions between community members and Bikita Minerals where the community is accusing the mine management for failing to comply with the both the Mines and Minerals Act and the EM Act on environmental issues.²³² Traditional leaders noted that there was lack of a legal framework which protects them from lithium mining activities. They also stated that the institutional bodies like EMA were ineffective in protecting the community from negative environmental impacts caused by lithium mining activities as the fines they imposed are not deterrent enough. Community members further stated that they were not being compensated by Bikita Minerals (Pvt) Ltd because there were no complaint mechanism platforms in place that could allow community members to seek redress to damages incurred. The UNGPs demand that any state must ensure that environmental rights affected by business

²³¹ Ibid.

²³² Business and human rights resource centre, Zimbabwe: community leaders accuse Bikita minerals of negatively impacting environment, access to water & food (2017) <<https://www.business-humanrights.org/en/latest-news/zimbabwe-community-leaders-accuse-bikita-minerals-of-negatively-impacting-environment-access-to-water-food/>> visited on 15 July 2023.

operations, in this case, mining activities, must be compensated. The challenges of lack of compensation encountered by communities are worsened by the ineffectiveness of environmental regulatory government agencies as noted by members of the community and this is hindrance to the promotion of environmental justice.

4.2.2 Fragmented and Archaic laws

It was noted that the principal Act regulating the mining industry, the Mines and Minerals Act, is now archaic and it fails to address critical emerging environmental issues. The Act no longer matches international standards. The Debshan (Pvt) Ltd case²³³ discussed earlier also shows the lack of harmony between the MMA and the EM Act. The respondents in the case argued that an EIA certificate was not a pre-requisite for the issuance of a mining certificate; and as far as they were concerned, an applicant for a registration certificate was only required to comply with section 45(2) of the MMA. More so, there is no express mention of the term EIA in the MMA as mentioned earlier, only inferences can be drawn from section 159 (3)(e)(vii).²³⁴

4.2.3. Environmental degradation

BLM's activities, have serious negative impacts on the environment resulting in the violation of environmental rights.²³⁵ The hunt for lithium ore has resulted in environmental degradation as massive deforestation has given rise to deep gullies in areas where the mineral is being extracted.²³⁶ Land degradation is an irrefutable environmental impact related to the different phases of mining operations in Zimbabwe. Environmental degradation compromises the basic privileges of communities to stay in a safe and clean environment. Large tracks of land are cleared away during the preparation of mining activities by miners in Zimbabwe. Artificial hills formed by mine dumps of quarry dust are replacing the original landscape that now has very little or no vegetation growing. Artificial hills were noticed by researchers at Bikita Minerals as evidence that lithium mining activities contribute immensely to land degradation. However,

²³³ Supra note 133.

²³⁴ See section 159(3)(e)(vii) of the MMA.

²³⁵ G.W. Mutanda & E. Chazireni, Implications of Bikita Minerals' Corporate Social Responsibility on Environmental Rights of Mining Communities in Bikita District, Zimbabwe *CSR, Sustainability, Ethics & Governance*, (2023) <<https://link.springer.com/chapter/10.1007/978-3-031-27512>> visited 20 July 2023.

²³⁶ Business and Human Rights Resource Centre, Zimbabwe: Two Lithium mines shut down for operating without environmental impact assessment certificates (2023) <<https://www.business-humanrights.org/en/latest-news/zimbabwe-two-lithium-mines-shut-down-for-operating-without-environmental-impact-assessment-certificates/>> visited on 15 July 2023.

Bikita Minerals is implementing backfilling as one of the several measures adopted to ensure that mining operations do not leave behind a trail of environmental degradation.²³⁷ Respondents also complained that abandoned open pits around Bikita Minerals were a great risk to both people and livestock. Researchers also observed the changing natural environment caused by excavation which results in open pits.

4.2.4. Cracking of houses

The people of Bikita are not benefitting anything from the mine and the worst part is that the dynamite explosions are causing cracks in their houses.²³⁸ The respondents noted that there was destruction of houses by extensive blasting activities of the mine. The researchers also observed some cracks on some houses caused by blasting as they interviewed respondents.

4.2.5. Air, soil, water and noise pollution

Lithium mining causes air, soil and water pollution.²³⁹ Zimbabwe's major lithium producing company, Bikita Minerals is also allegedly violating environmental rights through air, soil and water pollution.²⁴⁰ The respondents confirmed that there was a lot of air pollution due to excessive dust coming from mining activities at Bikita Minerals which could result in airborne diseases in the long run. All the respondents further reiterated that lithium mining at Bikita Minerals was causing soil and water pollution. The community surrounding Bikita has been without clean water for several years because rivers were being polluted by discharge of potentially toxic chemicals.²⁴¹ Community Members pointed out that household wells and boreholes were fast drying up because of underground seepage as water drains out quickly from the open pits.

Researchers also observed contamination of rivers and streams around Bikita and the community members also confirmed that the water was being contaminated by lithium mining

²³⁷ M, Ziyambi Bikita minerals takes steps to conserve environment, Tellzim (2018) <<https://tellzim.com/bikita-minerals-takes-steps-to-conserve/>> visited on 15 July 2023.

²³⁸ Mirrior Reporter, Bikita Minerals makes my heart bleed.(2022)<<https://masvingomirror.com/bikita-minerals-makes-my-heart-bleed-chamisa/>> visited 16 July 2023.

²³⁹ E. Giglio, Extractivism and its socio-environmental impact in South America. Overview of the "lithium triangle". 5(1) *América Crítica* (2021) p49,<<https://doi.org/10.13125/americanacritica/4926>> visited on 18 July 2023.

²⁴⁰ ZELA, Transitional minerals in Southern Africa: Are companies getting it right? Zimbabwe Environmental Law Association, (2021) <<https://zela.org/transitional-minerals-in-southern-africa-are-companies-getting-it-right/>> visited on 18 July 2023.

²⁴¹ Masvingo Mirror,*supra* note 121.

at Bikita Minerals. Community members were concerned about their wellbeing as they lacked access to clean and safe water as the major sources of clean water were being contaminated by Bikita Minerals. The surrounding area has also been exposed to high risks of waterborne diseases. Members of the community also mentioned that there was noise pollution caused by Bikita Minerals' activities like blasting and continuous movement of vehicles. Noise pollution is detrimental to health and therefore impacts negatively on the realisation of environmental rights.

4.2.6. Deforestation

Deforestation is widespread in the mining area at Bikita Minerals (Pvt) Ltd because mining operations strip larger tracks of areas to extract minerals from the ground. The respondents mentioned that large pieces of land were deforested by lithium mining activities at Bikita Minerals. The researchers also observed that large tracks of land were used by the mining operations. The cutting down of trees by Bikita Minerals results in more carbon dioxide emissions in the air, leading to ozone layer depletion thereby contributing to climate change which would negatively impact the realisation of environmental rights.

4.2.7. Ignorance or lack of awareness of environmental rights

Some of the responses from community members showed a lack of appreciation of environmental rights and laws dealing with environmental protection. Most of them did not know the laws that the mine should comply with in their operations. They also were unable to identify areas of the regulatory framework on lithium mining which need to be strengthened in order to uphold environmental rights enshrined in the Constitution of Zimbabwe and the EM Act as well as promoting environmental justice.

4.3. Recommendations

To address the challenges or impacts observed in the research, the following recommendations are proposed to the selected relevant ministries and institutions.

4.3.1. To the Ministry of Justice, Legal and Parliamentary Affairs

4.3.1.1. Review, Amendment and harmonisation of existing laws.

To address the archaic and fragmented legislation, there is need to first conduct a comprehensive review and assessment of existing laws and regulations related to mining and environmental protection, as well as identifying outdated and ineffective laws in order to propose amendments or new legislation to address current environmental concerns and to protect the rights of affected communities. Therefore there is a need for the current legislation on mining and the environment to be revised and aligned to match international standards. Zimbabwe's domestic laws and regulations dealing with natural resources and environmental protection must be harmonised and sufficiently detailed to enhance the realisation of environmental rights. Moreover, the Mines and Minerals Bill must be passed into law so that it can replace the outdated MMA.

4.3.1.2. Stand-Alone Lithium Mining Act

Apart from reviewing and harmonising existing laws, since lithium is now classified as a strategic mineral, and also taking into account the rush for the mineral in the country, there is need to enact a stand- alone Lithium Mining Act which regulates all lithium mining activities, including trade and beneficiation of the mineral. Currently, the lithium policy only governs the export, storage, transportation and processing of lithium bearing ores among other things, without focusing on the environmental impacts of lithium mining on local communities. If enacted as a standalone, the Act should also address all environmental concerns in lithium mining as well as addressing broad obligations of lithium mining companies in enhancing the protection of environmental rights of communities.

4.3.2. To Zimbabwe Human Rights Commission

4.3.2.1. Community engagement and awareness campaigns.

In order to address lack of awareness of environmental rights, there is need for education and awareness campaigns to educate the people in rural areas about their environmental rights since most of them are uninformed on the laws and policies on environmental protection. *Pro bono* lawyers and other professionals within government agencies should support communities in understanding and exercising their environmental rights as a way to enhance environmental justice in lithium mining communities.

4.3.3. To Environmental Management Agency

4.3.3.1. Promotion of sustainable mining practices and reforestation programs

To address the issue of deforestation, there is need to promote sustainable mining practices that prioritize the preservation of forests and encourage reforestation programs. Stringent regulations on mining practices to prevent or minimize deforestation, including the proper management and restoration of vegetation should also be implemented.

4.3.3.2. Development, strengthening and enforcement of laws dealing with air, soil, water and noise pollution

To address air, soil, water, and noise pollution, there is a need to set and enforce strict emission standards to minimize air pollutants from lithium mining operations, as well as implementing effective waste and wastewater management systems to prevent soil and water pollution. There is also need to carry out regular monitoring of air and water quality to ensure compliance with environmental standards. There should be regulatory mechanism to ensure that water is conserved so as to reduce eminent shortages in the Bikita Community. Bye- laws that specifically focus on water conservation and contamination must be made for the lithium mining communities. Water is a key component in the realisation of environmental rights. Contaminated water and limited water supply with adversely affect the realisation of environmental rights. In addition, noise pollution should be regulated through the implementation of noise control measures and appropriate buffer zones between mining activities and residential areas.

4.3.3.3 Implement land reclamation and rehabilitation programs

In order to remedy land degradation, there is need to implement land reclamation and rehabilitation programs to restore and rehabilitate areas affected by lithium mining activities. This is because, land rehabilitation efforts are equally important in the quest for protecting the environmental rights of vulnerable communities. There is also need to enforce strict guidelines for land use planning to minimize the environmental impact of lithium mining operations. Furthermore, there is need to conduct thorough environmental impact assessments (EIAs) prior to mining operations to identify potential risks and develop appropriate mitigation measures so as to minimise land degradation. Mining companies should also be trained to use new technology which is less injurious to the environment during the extraction of lithium.

4.3.3.4 Strengthening regulatory frameworks and enforcement mechanisms

To address non-compliance with the law there is need to strengthen regulatory frameworks and enforcement mechanisms to ensure compliance with environmental laws and regulations in the lithium mining sector. EMA as the responsible institution for monitoring environmental activities, must implement rigorous monitoring systems to regularly assess compliance with environmental standards and issue appropriate penalties for violations. In addition, there is need to provide training and capacity-building programs for mining operators and relevant government agencies to enhance their understanding of and commitment to environmental laws. This is because having adequate policies and laws in place and monitoring operationalization of these are the first steps towards good governance of the environment and natural resources.²⁴² There is also need to put in place complaints mechanisms to enable community members to seek redress when their environmental rights are violated by mining activities. Corporates that are mining lithium must also be taught to respect and uphold environmental and human rights standards as enunciated by the UN Guiding Principles for Business and Human Rights.

4.3.3.5. Development and enforcement of regulations and best practices for blasting

In order to deal with the challenge of cracking of houses, there is need to develop and enforce regulations and best practices for blasting in close proximity to residential areas to minimize structural damage to houses. Mining companies should be required to conduct comprehensive structural surveys of surrounding houses prior to blasting. In addition, there is need for the mining companies to provide compensation and support for affected residents to repair and reinforce their homes.

5. Conclusion

Although lithium mining continues to be instrumental in the economic development of Zimbabwe, it has also adversely impacted on the realisation of environmental rights. Lithium mining activities have already caused serious environmental impacts in some mining areas in Zimbabwe. This paper sought to assess the impact of lithium mining on the realisation of environmental rights and it focused on a case study of Bikita Minerals (Private) limited. The

²⁴² Business and Human Rights Organisation, Zimbabwe: CSO analyses legal developments & implications of lithium mining rush Business and Human Rights Centre (2021) <<https://www.business-humanrights.org/en/latest-news/zimbabwe-cso-analyses-legal-developments-implications-of-lithium-mining-rush/>> visited on 19 July 2023.

data for the study was collected using both doctrinal legal research and qualitative methodology mainly through documentary evidence, interviews and direct observations.

The study sought to address the extent to which the legal framework promotes the realisation of environmental rights in lithium mining in Zimbabwe and this was addressed by looking at the national legal framework for environmental protection. It was noted that the current legislative framework does not adequately promote the realisation of environmental rights in lithium mining areas due to the fact that the principal Act governing mining activities is now archaic and does not address current environmental challenges in the lithium mining sector. Disharmony between the EM Act and the MMA was also observed as demonstrated by the Debshan Pvt Ltd case. It was also noted that the Lithium Policy in the form of Statutory Instrument 5 of 2023-Base Minerals Export Control (Unbeneficiated Base Mineral Ores Order, 2023 and its subsequent amendment Statutory Instrument 57 of 2023- Base Minerals Export Control (Unbeneficiated Base Mineral Ores) (Amendment) Order, 2023 (No. 1), is silent on the environmental aspects of lithium mining and only focuses on exportation, storage, transportation and processing of lithium bearing ores among other things.

The paper also looked at the environmental challenges in lithium mining and it was highlighted that the extraction process can cause deforestation and habitat destruction, water scarcity and pollution, as well as air and soil contamination. The Bikita mineral case study further confirmed the same challenges. The findings of the research highlighted that lithium mining has resulted in excessive land degradation, cracking of houses, deforestation, air, soil, water and noise pollution. It was noted that there are poor legislative and weak institutional frameworks to protect and promote environmental rights in lithium mining communities. The laws are archaic and fragmented. Non-compliance with the law as well as absence of complaint mechanisms was also noted as an impediment to environmental justice. It was also observed that the larger population of people in remote areas do not know the existing laws on environmental protection and thus it was recommended that there be community engagement and awareness campaigns to educate the community members on environmental protection and rights.

Other proposed recommendations include the strengthening of regulatory frameworks and enforcement mechanisms, reviewing, amendment and harmonisation of existing laws, enactment of a stand-alone Lithium Mining Act, implementing land reclamation and

rehabilitation programs, development and enforcement of regulations and best practices for blasting, development, strengthening and enforcement of laws dealing with air, soil, water and noise pollution as well as promotion of sustainable mining practices and reforestation programs. If taken into account, all these recommendations would go a long way in promoting and protecting the realisation of environmental rights for lithium mining communities.

Interlinking municipal dumpsite management, environmental protection and human rights: Case of Masvingo, Zimbabwe

Manasa Sibanda and Mandiedza Parichi²⁴³

Abstract

The world over, people's right to a healthy, clean, and sustainable environment has been made precarious by local authorities' quality of service delivery, particularly on solid waste management. There is little literature specifically on the issue of human rights and waste management in Masvingo's Runyararo (Mucheke) West Municipality dumpsite. This study looks at how the municipality operates its solid waste management, focusing on implications on the human right to a healthy, clean and sustainable environment. A mixed methods approach was employed, where both qualitative and quantitative data were collected. To establish the level of compliance with policies, the study applied an evaluative approach. Results indicated that the establishment of the open dumpsite in 1998 complied with the Natural Resources Management Act (Chapter 20:13). However, after the enactment of the Environmental Management Act of 2002, it no longer conformed to the new law. Respondents consider the poor dumpsite management by the municipality as a lack of priority not capacity, as claimed by the municipality. Results also confirmed that the basic waste hierarchy of waste prevention, reduction, recycling was not being practiced. The absence of a parameter fence at the dumpsite was symbolic to free access by the public while exposing children to health risks. Notwithstanding the negative effects of the dumpsite on the human quality of life, self-employed waste recyclers consider the site as a convenient source of raw material and job creation. The study concluded that the management of the dumpsite by the municipality violated residents' right to a healthy, clean, and sustainable environment. It recommended that the municipality should decommission the dumpsite.

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1. Introduction and background

The world over, people's right to a healthy, clean, and sustainable environment has been made precarious by the quality of service delivery by local authorities on solid waste management. In 2014, Zimbabwe adopted an Integrated Waste Management Plan, which is premised on the principle of a safe, secure and sustainable solid waste management system. The plan incorporates five strategies, which are to reduce, refuse, reuse, repurpose and recycle. For the United Nations (2011), however, it is paramount to undertake the first four strategies prior to recycling in order to minimize dumpsite waste. In a way, this extends the dumpsite lifespan as less quantities of waste are deposited. In Zimbabwe, three types of dumpsites are prevalent, which are municipal solid waste, industrial waste and hazardous waste.

The effects of poorly managed dumpsites reported in literature include pollution of surface and underground water, injury to waste recyclers, exposure to poisonous fumes, burns from open fires and odors. Exposure to poisonous gases from burning waste has far reaching health consequences to residents and waste recyclers. These gases may contain chemicals which cause a number of illnesses including respiratory challenges. Flies have been shown to be vectors of diseases such as dysentery and cholera.²⁴⁴ The certainty of threats to human quality of life would be perceived through failure to achieve Sustainable Development Goals (SDGs).

Global environmental pollution as a result of increased waste generation and rapid urbanization, which leads to environmental degradation and climate change is a major problem.²⁴⁵ The UN (2011) expressed concern over global accumulation of municipal waste per capita due to increasing global population, urbanization and global trade. Municipal solid waste is defined as solid waste from commercial enterprises, offices, hospitals, households, food outlets, street sweepings, and other public places managed by or on behalf of the municipality.²⁴⁶ It is estimated that since 1980, the quantity of municipal waste generated in the

²⁴⁴ S.G. Praveena and P.V.V. Prasada Rao, 'Impact of Leachate on Soil Properties in the Dumpsite (A Case study of Greater Visakhapatnam)', *International Journal of Engineering Research and General Science* (2016) 4 (1).

²⁴⁵ A. Feiferyte-Skirien and Ž. Stasiškiene, 'Seeking Circularity: Circular Urban Metabolism in the Context of Industrial Symbiosis', *Sustainability* (2021) 13, 9094.B, Azevedo, L. Scavarda, R. Caiado and M. Fuss, 'Improving urban household solid waste management in developing countries based on the German experience', *Waste management* (2021) 120, pp 772-783.

²⁴⁶ K. Naidoo, 'An analysis of municipal solid waste management in South Africa using the Msunduzi municipality as a case study', Published MSc Thesis, School of Geography, Faculty of Science and Agriculture. University of Natal, Pietermaritzburg, South Africa (2009).

OECD area in 2006 alone exceeded 650 million tons (560 kg per inhabitant).²⁴⁷ Furthermore, the EU-12 group experienced a steady decrease in per capita generation of waste over the same period albeit with a slight increase between 2005 and 2006. For urban areas in the Caribbean and Latin America, projections are that waste shall increase from 131 million tons to about 179 million tons in 2030. Moreover, of the approximately 200 million tons of waste generated annually in Africa, an estimated 30-50 per cent is not properly disposed and presents a severe health and environmental hazard. Nonetheless, UN suggested the need for engineered landfills as a waste disposal solution that is more environmentally acceptable than open dumpsites and uncontrolled burning of waste, which are common in Zimbabwe.

Concomitantly, calls for national efforts to be inclusive and multi-sectoral in approach, are needed for sustainable waste management. Thus, the government of Zimbabwe (GoZ) was spot-on when they reviewed the Natural Resources Act (20:13),²⁴⁸ which was superseded by the Environmental Management Act (Chapter 20:13) that established Environmental Management Agency (EMA) offices at national, provincial and district levels.

The ‘current’ mantra by the second republic of Zimbabwe that ‘Zimbabwe is open for business’, created a window for investors to take advantage of the business opportunities available to enhance national economic development.²⁴⁹ The protection of human rights through safeguarding the right to a healthy, clean, and sustainable environment is provided for, at global level, in the UN Declaration of Human Rights 1948, the UN Human Rights Council 2011 on Business and Human Rights, Sustainable Development Goals (SDGs) numbers 3, 6, 11 and 13.²⁵⁰ The UNGP on Business and Human Rights principles are based on three pillars. Pillar I clarifies the legal duty of States to protect individuals from adverse business-related human rights impacts and outlines a set of operational principles with which States should implement this duty. Pillar II identifies the responsibility of business enterprises to respect human rights and delineates a due diligence process with which companies should give effect

²⁴⁷ UN.(2011).WasteManagement,Chapter4. See

www.undp.org/esa/dsd/resources/res_pdfs/publications/trends_Chemicals_mining_transport_waste/ch4_waste_management.pdf visited on 23 October 2023.

²⁴⁸ Part IV, section 25, gave the President the power to providing land for use as dumpsites to municipalities.

²⁴⁹ The country’s Vision 2030 and National Development Strategy (NDS1) are the drivers towards achieving a second economy by the year 2030.

²⁵⁰ UN Sustainable Development Goals call for, SDG3-Good Health and Well-being, SDG6-Clean Water and Sanitation, SDG11-Sustainable Cities and Communities, SDG13-Climate Action and SDG15-Life on Land. See UN, ‘Sustainable Development Goals’, (2015) www.undp.org/sustainable-development-goals visited on 22 October 2023.

to this responsibility. Pillar III stresses and specifies the need to ensure better access to remedy for victims as a joint responsibility of States and business enterprises.²⁵¹ At national level, the right is provided for in the Constitution of Zimbabwe of 2013,²⁵² the Environmental Management Act of 2002, Statutory Instrument 6 of 2007- Effluent and Solid Waste Disposal Regulations,²⁵³ the Hazardous Waste Management Regulations (SI 10 of 2007),²⁵⁴ the Urban Council Act 29:15 and the Integrated Waste Management Plan of 2014.²⁵⁵

The challenge of access to appropriate and standard dumpsites by local authorities in Zimbabwe is perennial. In a 2021 report by the Auditor General, local authorities such as Bubi, Bindura, Binga, Chitungwiza, Chipinge, Masvingo, Marondera and Mutare, do not have suitable landfill sites, garbage management equipment and funding to establish standard scientific engineering landfill sites. Continued use of such dumpsites poses threat to the environment and human rights.²⁵⁶ For Masvingo, the Auditor General reiterated that:

“I also noted with concern that Councils were not practicing effective solid waste management as they did not have engineered landfills. Masvingo City ...was among the Councils using illegal dumpsites for their solid waste disposals. The City Council had eleven refuse collection vehicles which have out-lived their economic life-span of five years according to the Council’s policy. I noted that only three trucks were runners, one truck was awaiting repairs and eight trucks which were non-runners had been assessed for decommissioning. In addition, there was no fencing (physical security) at the dumpsite as a restrictive measure to unauthorised access or entry”. (OAG, 2022: ix, 16).

²⁵¹ RWI, ‘2023 Call for Research Grant Proposals Business and Human Rights’, 2023 www.rwi.lu.se.

²⁵² Zimbabwe’s Constitution of 2013, Constitution of Zimbabwe Amendment (No. 20) Act’, 2013, in section 73 provides for environmental rights that include the right to the prevention of pollution and ecological degradation, conservation and ecologically sustainable development and use of natural resources.

²⁵³ The SI regulates the disposal of solid waste and effluent using the “polluter pays” principle.

²⁵⁴ It provides for the issuing of licenses for the generation, storage, use, recycling, treatment, transportation, or disposal of hazardous waste for waste generators and waste handlers.

²⁵⁵ The Integrated Waste Management Plan is a framework used when designing and implementing waste management systems or initiatives. The assessment of the IWMP involves three stages namely, situational analysis, development of the IWMP and implementation of the IWMP. *See* Government of Zimbabwe. (2014). Zimbabwe’s Integrated Waste Management Plan, 2014. Harare. Retrieved October 22, 2023, from www.yumpu.com/en/document/view/62915014/zimbabwe-integrated-solid-waste-management-plan

²⁵⁶ OAG Zimbabwe, ‘Report of the Auditor-General for the Financial Year Ended December 31, 2021 on Local Authorities. Presented to Parliament of Zimbabwe’, (2022). Harare, Zimbabwe. www.auditorgeneral.gov.zw, visited on 22 October 2023.

Notwithstanding, municipalities continue to increase rates charged to residents instead of broadening their tax base by improving efficiency in revenue collections. This implies unscientific pegging of solid waste fees which are exorbitant at the expense of poor delivery. Similarly, this implies infringement of the UNGPS's Pillar I that clarifies the legal duty of States to protect individuals from adverse business-related human rights impacts. In a way, the implementation of the Integrated Waste Management Plan by the Government of Zimbabwe through a cross sectoral and inclusive system of governance, facilitates the devolution and decentralization of responsibilities and powers from central to lower tiers of governance for greater human rights advancements and development. This is enunciated in the National Development Strategy 1 (NDS1), the Devolution and Decentralisation Policy and Chapter 14 of the Constitution. This study evaluates human rights infringements regarding operations on the Mucheke dumpsite in Masvingo for the effective implementation of the Integrated Waste Management Plan and EMA.

2. Objectives and Methodology

This study is premised on a mixed qualitative and quantitative methodological inquiry. It assesses the interlinkages between dumpsite management by the Masvingo municipality and the protection of the environment and human rights in Zimbabwe. In particular, the protection of the environment considers the management of the dumpsite in relation to its perceived potential effects on the right to a healthy, clean, and sustainable environment of residents in the surrounding residential and farming communities. From an evaluative perspective, the study enunciates what happened and how, in the case study. As such, the case study looks at the policy provisions relevant to the establishment and implementation of the Runyararo (Mucheke) West landfill, hereafter called Mucheke dumpsite, to establish whether or not it complied with policy to ensure that the right to a healthy, clean, and sustainable environment are safeguarded. In addition, the study explores challenges experienced in waste management by the municipality and suggests alternative interventions available to ensure that the management system protects the environment and improves the enjoyment of the human right to a healthy, clean and sustainable environment.

A total of 17 purposively selected key informants were interviewed. Key informants included municipality authorities (executive and councillors) and technical staff, officers from EMA, representatives from the Ministry of Environment, Climate, Tourism and Hospitality

Industry,²⁵⁷Ministry of Local Government, Public Works and National Housing,²⁵⁸NGO staff as well as individuals directly involved in the recycling of waste. In addition, local resident association representatives were reached out to understand their views on the activities of the municipality towards the protection of their right to a healthy, clean and sustainable environment. Structured questionnaires were administered to 40 randomly selected participants in Mucheke West, Garikai and Victoria Range and the surrounding area. Direct observation on the activities and state of dumpsite was applied during field visit to the area. Secondary data were collected from published academic articles, municipal reports and minutes, newspaper articles and the internet. Ethnographic material was provided from the voices of participants on relevant issues in the many studies that interlink dumpsite management and rights of residents. Data were analysed by themes and content analyses for qualitative and secondary data, respectively. MS Excel was used to analyse quantitative data, which was descriptive. Ethical standards required in scientific research such as gaining informed consent, voluntary participation and no attempts at coercion and the respect for confidentiality were upheld.

3. Results and discussion

This section presents and discusses results thematically. The results were from key informant interviews, focus group discussions, direct observation, secondary sources and structured questionnaire survey.

3.1. Policy Provisions at Establishment of the Mucheke Dumpsite

The study revealed that the colonial legacy developed land use plans that designated industrial areas and wasteland such as dumping sites and sewage plants in areas that were close to high density areas, where the majority of the black population reside. This legacy has continued in the postcolonial era. During fieldwork, it was observed active dumping activities by the municipality at the Mucheke dumpsite. Records at the municipality show that the establishment of the Mucheke dumpsite in 1998 complied with the Statutory Instrument 1675/1979, the Natural Resources Act (Chapter 20:13) of 1996 and the Urban Councils Act (Chapter 29:15). At this juncture, it can be argued that the colonial legacy was sustained unabated. Participants from the Environmental Management Agency also reiterated that Part II of the Natural

²⁵⁷ Hereinafter referred to as the Ministry of Environment.

²⁵⁸ Hereinafter referred to as the Ministry of Local Government.

Resources Act established the Natural Resources Board, which approved and supervised the Mucheke dumpsite through provincial and district conservation officers.

It was revealed by residents and participants from CSOs that the collection and dumping of waste at the site was efficient until about 2008 when the economic situation in the country became challenging. Participants from Garikai and Mucheke West described that in 2008 the dumpsite was already full. The collection of waste became irregular and residents started dumping waste on undesignated sites including roadsides. This coerced residents to burn waste because it was accumulating in the residential areas, exposing residents to harmful gases and smoke emitted from the fires. Respondents from the municipality blamed the high inflation and increased costs of doing business during the period (UN-Habitat, 2021). The blame game by the respondents from the municipality is an effort to ascribe the poor service delivery to the national economic environment. As the cost of removal and management of waste increased, the poor delivery of solid waste removal services by the municipality violated the right to a healthy, clean and sustainable environment for the residents.

The scenario depicted in the Auditor General's report reveals the status quo in 2021 regarding the use of decommissioned and unsuitable dumpsites by three local authorities, which included Masvingo. Three years after the Auditor General's report, the situation in Masvingo has not changed. Similar findings were illustrated by Makwara and Magudu that Waste Management Systems were largely dysfunctional.²⁵⁹ Regardless of the illegality of the use of undesignated dumpsites, the municipality was held responsible by enforcement agents. The deliberate breaching of the law seems to suggest that enforcement is either weak or the fines levied are not deterrent. As a result, the municipality continues with the illegal waste management practices that infringe the right of residents to a healthy, clean and sustainable environment. Calls have been made by CSOs such as the Matabeleland Institute for Human Rights (MIHR) to the government to timeously deliver the Inter-Governmental Transfer (IGTF) fund and expedite the construction of standard landfill sites for local authorities in order to improve solid waste management.

²⁵⁹ E. C. Makwara and S. Magudu, 'Confronting the Reckless Gambling with People's Health and Lives: Urban Solid Waste Management in Zimbabwe', *European Journal of Sustainable Development* (2013) 2, 1, pp 67-98.

3.2. Policy provisions after establishment of the Mucheke Dumpsite

In our interviews with key informants comprising of local authority, CSO, ministry representatives, they acknowledged that provincial councils are legally obliged to provide basic services such as clean water, sanitation and waste management to citizens. They are empowered by the Constitution of Zimbabwe (Chapter 14) and the Urban Councils Act (29:15) to charge, collect solid waste and safely dispose waste at designated areas ensuring environmental safety at all levels. Participants highlighted that the Environmental Management Act and Statutory Instrument (SI) 7 of 2007 (Environmental Impact Assessment and Ecosystems Protection) are the legislative regulations that govern Environmental Impact Assessments (EIAs). Designated dumpsites or landfills are established after undergoing an EIA, as listed in the first schedule of the EMA Act. It was confirmed that EMA considers the Mucheke waste site as a dumpsite, while the municipality recognises it as a landfill. This illustrates contradictory perceptions about the waste site. Results illustrate that by virtue of a change in policy, the Mucheke dumpsite require an EIA to continue being used as a dumpsite. Participants as well as records from EMA and the municipality confirmed that no EIA or an Environmental Action Plan was in place. As such, the use of the Mucheke dumpsite remained non-compliant with EMA requirements. This infringes the rights of residents to a safe environment as stipulated in the EMA Act.

In spite of the responsibility of the municipality to fully execute control measures for solid waste management, there was no evidence of efforts to promote the reducing of the amount of waste produced, recycling materials where possible and composting organic materials among residents. Participants involved in the recycling of waste were operating independently as a livelihood strategy. Collected waste from both industry and domestic areas were not sorted and were dumped onto the same dumpsite. Irrespective of the inefficient operations of the dumpsite management by the municipality, residents pay their waste removal bills every month. The fees for waste removal were pegged in United States Dollars (a more stable currency), the equivalent of which is residents paid at the prevailing bank rate. Because of continued devaluation of the Zimbabwe currency, charges seemingly increased every month. Participants regarded this as an unwarranted monthly increment, which did not correspond to service delivery.

3.3. Residential encroachment and expanding dumpsite

It was established that the municipality had plans to commission a new dumpsite where the Victoria Ranch residential area is situated. According to a representative from the Residents Association, this was a political decision by the ruling party and not the local authority. He said that:

“You know what, the council had planned to move the dumpsite to Victoria Ranch. But now you see, there is a residential area now because of these politicians. They thought that such a move will garner political support from the residents in the new residential area. Now that people did not vote for them, I don’t know what they [municipality executive and relevant government officials] are thinking. The council continues to dump here at Mucheke. People are burning waste and we keep breathing the smoke. Surely, they don’t care.”²⁶⁰

The above quote illustrates a perception by local people that political decisions override those of local authorities. The participant seems to suggest that the establishment of the Victoria Ranch residential area instead of a dumpsite was to gain political mileage by prospective political party candidates. Sentiments also seem to suggest that continued dumping of waste at Mucheke dumpsite is a punishment for residents who did not vote for the ruling party candidates into political offices (Councilor and Member of Parliament) during the August 2023 elections. Thus, the reason for continued dumping of waste onto a site that is supposed to be decommissioned is synonymous with political retaliation by those who ‘don’t care’ (authorities), according to the Masvingo Residents Association member. Here, the participant believes that the continued dumping of waste by the municipality at the decommissioned Mucheke site is politically motivated.

The study revealed that people who collect waste for recycling locally, known as ‘scavengers’, have the habit of burning waste. It was evident during our field visit to the site that smoke was almost everywhere as waste was burning. No one claimed responsibility for causing the fire at the dumpsite. This results in the generation of poisonous gases and smoke that are inhaled by

²⁶⁰ Interview with Masvingo Residents Association member, 14 September 2023.

residents around the dump site especially in the Mucheke West, Garikai and Victoria Ranch high density suburbs.²⁶¹ In the foregoing discussion, it can be observed that the right to a healthy, clean, and sustainable environment for local people continues to be violated or disenfranchised.

Human rights issues explored in this study are being affected by disposal of solid waste by the municipality. These include substantive rights²⁶² regarding exposure to waste such as the right to life, health and safe environment. From the Universal Declaration of Human Rights of 1948, the following articles are relevant, namely, article 3 on right to life, liberty, personal security, article 19 on the freedom of opinion and information and article 25 on the right to adequate living standard. By virtue of the proximity to the dumpsite, the Mucheke West, Garikai and Victoria Range residents are more vulnerable, at risk and negatively impacted. As such, the residents require greater protection and the state needs to conduct further analysis of their condition and enforce the existing legislation.

Residents complained about the prevalence of rats (*makozho*), flies (*nhunzi*) and mosquitoes (*vutunga*). The absence of a parameter fence around the dumpsite to prevent access to the public was perceived as municipality negligence. Results confirmed that even children had free access to the dumpsite, which exposed them to health risks. This supports the view of Makwara and Magudu (2013) that poorly managed dumpsites pose a health threat to residents, waste collectors and the environment. Apart from negative effects of the dumpsite on the health and aesthetics of local people and residential area, a number of self-employed waste recyclers, including the homeless who reside at the dumpsite view the Runyararo West landfill as a convenient source of raw material and job creation. One waste collector who specialises in scrap metal, empty water bottles and fizzy drink plastic bottles said that the current location of the dump site is conducive. He highlighted that he can walk from Mucheke B residential area to the site to start collecting waste as early as six o'clock in the morning and finishing at around half-past five to about six o'clock in the evening. He narrated that:

²⁶¹ See also the observations by N. Ngaza, 'Effects of the Dumpsite on Runyararo West and Victoria Ranch Residents Masvingo City, Zimbabwe', *European Journal of Social Sciences Studies* (2018) Volume 3 (2) pp 85-100. doi:10.5281/zenodo.1341414.

²⁶² A substantive human right is a right held to exist for its own sake and to constitute part of the normal legal order of society. These include the universal rights to life; health; safe food and water.

“...the location of the dumpsite is very convenient for me. I wake up as early as five in the morning, walk to the site and start my collection business. I do not need to spend money on transport to and from work. I normally arrive early because these council workers burn waste because the dumpsite is overfilled. They want to reduce waste, I guess. I make a lot of money from scrap metal than plastic bottles. On average, I make about fifty dollars every week just from scrap material”.²⁶³

When asked about the new Cambria open dumpsite, which is 12km away from Masvingo central business district (CBD), the scrap metal collector and recycler was not aware of it. However, he alluded that relocation to the new site shall reduce his profits due to transport and storage costs. It emerged during the above interview that the dumpsite is a viable source of urban livelihood from selling scrap metal. This brings up a new dimension regarding burning of waste at the dump site. He points out that council workers are responsible for burning waste most of the time as a means of reducing the oversubscribed dumpsite. This is contrary to observations by Ngaza that burning of waste at the dumpsite is mainly caused by vagrants. Local authorities denied causing the fires and blamed ‘vagrants’ and residents in the surrounding area. This scenario confirms that continued exposure of air pollutants to residents in the three high density suburbs violates their rights to a healthy and safe sustainable environment.

EMA and CSOs mentioned that government’s commitment to facilitate access to land to commission a new landfill was fulfilled in 2019. A 12-hectare plot on Cambria farm was availed to the municipality for the storage and disposal of waste. Local authority representatives reiterated that the new site, located 12km from Masvingo city required funding to comply to the required standards (conduct an Environmental Impact Assessment and develop an Environmental Action Plan) and be developed further. EMA and the municipal authorities pointed out that the new landfill would improve solid waste management and enhance the safeguarding of both human and environmental health. However, concern was raised that in spite of government implementing the Devolution and Decentralisation Policy which allocates a budget to the City of Masvingo, financial disbursement was not forthcoming. One authority from the municipality said that:

²⁶³ Interview with Scrap Metal recycler 16 September 2023.

“You know very well that people here [Masvingo urban] always vote for the opposition party. Previously the majority of ward councillors were MDC [Movement for Democratic Change] and now it is CCC [Citizen’s Coalition for Change]. So, some elements in government feel that by disbursing funds to the Council [Masvingo Municipality] they are helping the opposition to gain political mileage. And by limiting the capacity of us [municipality] to deliver services, we will lose the hearts of residents thus making way for the ruling party. Literary, we [municipality] are intentionally incapacitated by the government. This is the plain truth...”²⁶⁴

Sentiments from this key informant reveals that there was no synchronised access to land and a supporting budget to develop the Cambria farm (for instance, sinking three boreholes, construction of offices and staff house at the site), which was designated as a new landfill for the Masvingo Municipality. Due to the fact that the majority of councillors in the municipality were from the opposition party, a three-year delay in the disbursement of funds was interpreted as a political move to incapacitate the municipality. This could be seen as the lack of capacity by the opposition dominated municipality failing to deliver quality service by residents implying that the rights to safeguarding of both human and environmental health are infringed.²⁶⁵

On the other hand, all participants described the Mucheke dumpsite as over-filled, pollution and a health hazard to residents. Such sentiments as “*pazarisamarara* - overflowing with garbage, *hapachaiti* - it is no longer suitable,- we are fed up with choking fumes, rats and flies”, were echoed during focus groups and key informant interviews. As part of the decommissioning of the Mucheke dumpsite, the municipality acknowledged putting measures to reduce fires by using gravel. However, incidences of uncontrolled fire continue. Although the municipality considers a reduction in the frequency of fire at the site, residents view otherwise.

Both informants from the ministry of local government and municipality shared the concern that the municipality lacked capacity to effectively and efficiently collect and store waste

²⁶⁴ Interview with local authority representative, 14 September 2023.

²⁶⁵ Similar results were observed by Makwara and Magudu (2013).

without support from central government. It was revealed that the collection of solid waste was regular by residents and municipal representatives. A blame game by the municipality and residents ensued. However, the number of dump trucks was limited, which corroborates with findings by Makwara and Magudu.²⁶⁶ As explained by the municipal authorities, the collection of garbage from residential and industrial areas were staggered over a designated day, once a week. For instance, in Mucheke West, Garikai and Victoria Range, waste collection is on Thursdays. Not only were dump trucks in short supply but financial resources to fully prepare the newly acquired landfill at Cambria farm.

Results from a focus group discussion with waste recyclers showed that 60 per cent of the participants blamed the lack of commitment by the local authority to provide an effective waste collection and management system. They reiterated that the municipality has always been buying expensive cars for its executive without prioritizing waste collection vehicles and equipment. All of the participants in the focus group agreed that there were qualified engineers and technicians employed by the municipality, yet poor waste management is experienced in the city. Such sentiments as (- who are they waiting for, to tell them that the current dumpsite is overfilled and to find another suitable site?) This lack of capacity and priority, thus, can be attributed to the Municipality.

3.4. Waste management practices by the Municipality and residents

All participants acknowledged that neither the local authority nor residents practiced waste separation. As such, plastics, organic material, glass and metals were all dumped in one package. Basic waste hierarchy of waste prevention, reduction, recycling was not being practiced. Another area of concern reiterated by EMA and CSOs was lack of information dissemination to promote waste separation by the municipality to residents. Participants from CSOs highlighted that part of their role was to complement municipal works to improving the capacity of residents to separate, reuse, recycle waste and generate income, reduce the quantity of waste delivered to the dump site as well as promote environmental sustainability. In this regard, they perceived that the municipality was not doing enough. One middle aged male from an NGO promoting environmental management initiatives in Masvingo province said that:

²⁶⁶ Makwara and Magudu (2013).

“It seems that these guys [municipality] are specialising in collecting rates [waste and water charges] from residences just to collect waste and not performing all their roles especially the promotion of waste separation. They only sell these black plastics as bins. Yet, they have a department of works and projects that is manned by qualified staff. They always complain that they do not have funds to support such programmes. One would wonder why they acquire those black plastic bags, which they sell at a profit but would not find other containers of different colours and do the same. They also have offices strategically located in almost every high-density area, just to collect money, *hapanazvimwe*[nothing else] but will not use them to disseminate information on waste separation or even recycling. Every week, they are keen to collect waste in whatever form and just dump it. Period. Literarily, they are infringing on the citizen’s rights of access to information and a clean and safe environment.”²⁶⁷

The sentiments by the participant from the CSO suggests that Municipality is concerned with maximising income generated from rate payers and minimizing costs by not fully playing their role in best waste management practices. Such neglect of roles by the Municipality is a violation of the Urban Council Act (Chapter 29:15).

4. Conclusion

Waste management records in Masvingo Municipality on the establishment of the Mucheke dumpsite date back to 1998, when the population of the city was relatively low. However, the population continued to grow for various reasons. This increased the quantity of waste being generated by residents. This case study illustrated that the lack of capacity and prioritization and poor waste management have become a critical issue in Masvingo with consequences on the human quality of life and right to a safe, healthy and sustainable environment. As human settlement encroaches the dumpsite due to the high demand for housing, it is filling up. In spite of a new landfill that was allocated to the municipality by central government, the use of a decommissioned dumpsite continued unabated. This had consequences on the right to a safe, healthy and sustainable environment of residents. In addition, the dumpsite has generated a

²⁶⁷ Interview with CSO participant, 14 September 2023.

high prevalence of vector borne diseases, persistent fires and odors. The absence of a parameter fence around the dumpsite indicates the free access by the public and exposes children to health risks. The basic waste hierarchy of waste prevention, reduction, recycling was not practiced. Municipality services to collect waste remained irregular and inadequate. Notwithstanding the negative effects of the dumpsite on human quality of life, self-employed waste recyclers consider the site as a convenient source of raw material and job creation. The study concluded that the management of the dumpsite by the municipality violated the right of residents to a healthy, clean, and sustainable environment.

5. Recommendations

This section provides recommendations emerging from the results, discussion and conclusion. It is recommended that the government of Zimbabwe should integrate the Waste Management Plan through a cross sectoral and inclusive system of governance, facilitate devolution, and access to land to local authorities for developing standard landfills and the decentralisation of responsibilities and powers for greater human rights advancements and development. Further, it should ensure the timely disbursement of decentralisation funds to municipalities. To reduce recurrent use of illegal dumpsites, the government of Zimbabwe should review levies charged by municipalities to defaulters. Regarding human rights, the state should protect the Mucheke West, Garikai and Victoria Range residents from the health risks posed by the illegal dumpsite through enforcement of existing legislation. For Masvingo Municipality, it should establish engineered landfills as waste a disposal solution that is more environmentally acceptable than the popular open dumpsites in Zimbabwe. There is a need for future studies that alert authorities on the immediate attention areas that safeguard the right of residents to a healthy, clean, and sustainable environment.

Violence and vulnerabilities: Experiences of female vendors in artisanal mining spaces in Mazowe, Zimbabwe

Tsungai Rumbidzai Nondo and Abigail Benhura²⁶⁸

Abstract

Extensive research has been done on women's involvement in artisanal mining activities globally. However, violations faced by women in these artificially created communities where women camp for financial benefits continue to receive minimal attention. While there is considerable research on sexual and gender based violations experienced by women miners involved in the mining sector in general and ASM in particular, there is scarcity of such scholarship for their female counterparts plying trade in downstream businesses on ASM sites. This means that the subsequent sexual and gender based violations that they experience remain under researched. This research explored the experiences of female vendors conducting downstream businesses at artisanal and small-scale mining sites in Mazowe. The research contributes to the literature on women's vulnerabilities in artisanal mining spaces by using the Sustainable Livelihood Approach (SLA). This approach allowed the researchers to investigate the lived experiences of female vendors operating in Mazowe artisanal mining areas vis-à-vis their exposure to sexual and gender-based violence (SGBV), and the importance of a regulatory framework for the improvement of their lives. The study employed a qualitative research methodology within a case study research design. Purposive and snowballing sampling techniques were used, and thematic analysis was used to analyse the data. The study established that due to the informal and irregular nature of artisanal and small-scale mining (ASM) sites, women involved in downstream activities at these mining sites are often invisible. The lack of a regulatory framework leaves a policy vacuum that has undoubtedly exacerbated social ills in the sector and consequently the vulnerabilities of women working therein. The study therefore recommends the Zimbabwe Artisanal and Small Scale Miners' Council (ZAMSC) to lobby policy makers in order to regularise artisanal and small scale mining. This will lead to the recognition of the essence of downstream activities in artisanal mining areas and subsequent protection of informal female workers in that sector. The study also recommends awareness campaigns in these areas in order to empower women to have agency to report sexual and gender based violence.

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1 Introduction

Globally, about 100 million individuals depend on artisanal mining and its related activities as a source of livelihood²⁶⁹ either as business people or as dependents. In most developing countries, traditional livelihoods like agriculture have experienced challenges such as climate change which have forced people to look for alternative sources of livelihoods. Increased poverty, lack of employment opportunities, climate change and hyperinflation have seen artisanal mining growing in importance in developing countries.²⁷⁰ As such, artisanal mining has become a main source of livelihood in developing countries where there are narrow economic opportunities.²⁷¹ Artisanal mining has become an easier choice due to its accessibility to many unskilled labourers. Many people are choosing artisanal mining because of low entry barriers since it does not require a legal mining title.²⁷² Globally, women comprise between 10 to 50 per cent of artisanal miners, with Africa having the highest percentage ranging between 40 to 50 per cent.²⁷³ In Asia and Latin America women comprise about 10 per cent and 20 per cent of the workforce respectively.²⁷⁴

Artisanal and smallscale mining (ASM) provides a valuable source of livelihood for many people in Sub-Saharan countries.²⁷⁵ Though ASM is predominantly a male domain, there has been a notable escalation of women's involvement in artisanal mining and its downstream activities. Artisanal mining activities provide an important opportunity for women to find employment outside agriculture, street vending, cross border trading and other livelihoods that are predominantly occupied by women. Limited work opportunities in the formal sector, high fertility rates and the feminisation of poverty have also contributed to the need for women to

²⁶⁹ See https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_007929/lang--en/index.htm (Accessed 30 April, 2023).

²⁷⁰ T. Chawatama and A.A. Oyelana, 'Artisanal gold mining in Zimbabwe: Prospects and challenges for the low income groups in the Chegutu Mining District', 68:1-3 *Journal of Human Ecology*, (2019) pp26-41.

²⁷¹ *Ibid.*

²⁷² *Ibid.*

²⁷³ G. Ofosu, et al. 'Gender and artisanal mining and small scale mining: Exploring women's livelihood occupational roles in formalised settings', 96 *Journal of Rural Studies* (2022) pp.121-128.

²⁷⁴ D. Mugo, et al. 'The Social-Cultural Context Of Women Participation in Artisanal and Small-Scale Mining: Case of TaitaTaveta Region Of Kenya', 2:5 *African Journal of Emerging Issues*, (2020). pp.21-30.

²⁷⁵ R. Stokes-Walters, et al. "If you don't find anything, you can't eat"—Mining livelihoods and income, gender roles, and food choices in northern Guinea. 70 *Resources Policy*, (2021). pp101939.

be involved in informal livelihood ventures in artisanal mining sites.²⁷⁶ Because of male dominance in the sector, women normally occupy the lowest income generating activities in the sector such as vending, cooking and commercial sex work. Women's livelihood struggles bring them to the sites as vendors selling fruits, vegetables and food.²⁷⁷

The article is divided into six sections: The first section gives the background to artisanal and small-scale mining contexts globally, regionally and locally. In this section, the paper locates female vendors as a population group that pursues peripheral livelihoods such as selling food, second hand clothes and other basic essentials in ASM spaces. The focus is on these women's vulnerabilities and exposure to archetypal violence and the (lack) of legal protection in these areas. The second section covers the study's assumptions and research questions which seek to guide the focus of the study. The third section describes the methodology and theoretical framework and explains the Sustainable Livelihood Approach (SLA) as the lens into how the ASM environment is used by the female vendors to sustain their livelihoods. The fourth section analyses global to local literature on perspectives of the prevalence of SGBV in ASM; and the regulatory frameworks available for use in these spaces. The fifth section presents and discusses findings of the study; and the sixth section makes conclusions and recommendations on this phenomenon.

2. Background to study

Mugo, et al contends that the pursuit of livelihoods through artisanal mining is to a large extent poverty driven, while Aurther-Holmes, confirms and adds that it provides economic opportunities for both men and women in rural and urban areas.²⁷⁸ For urbanites, abandoning the city for mining areas (ASM) underscores the availability of alternative livelihoods based on natural resource extraction activities. Despite the perceived potential that these alternative livelihoods have for the eradication of poverty (SDG1.1) and promotion of economic growth (SDG 8), there continues to be an infringement of women's rights in political, economic and

²⁷⁶ M. Dzvimbo, et al. 'Scratching the Surface: Exploring Women's Roles in Artisanal and Small Scale Mining in Zimbabwe', 2:3 *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*, (2019) p.153-133.

²⁷⁷ C. Watson, BRIEFING NOTE-Gender-based violence and women in artisanal mining in Zimbabwe. (2021).

²⁷⁸ F. Authur-Holmes and K.A. Busia, 'Occupying the Fringes: The Struggles of Women in Artisanal and Small-Scale Gold Mining in Rural Ghana—Evidence from the Prestea—Huni Valley Municipality', *Gender Issues*, 38: (2021) pp.156-179.

social sectors of society.²⁷⁹ Over the years, feminist developmental approaches have called for women's inclusion in development in all sectors of the society but there have not been changes in the social, cultural and legal structures that give rise to inequalities in society. While the liberal feminists argue that men and women should have equal rights, Marxist feminists argue that the participation of women in the public sphere is key to their liberation.²⁸⁰ The liberal feminist view sets the legal scene for women's rights to be in the sector, complemented by the practical implementation and access approaches to economic empowerment from the Marxist perspective. In pursuance of economic liberation, women are increasingly entering male dominated environments like artisanal mining.²⁸¹

Directly, very few women are engaged in mining operations, while indirectly, they service the mines through downstream activities like vending fruits, vegetables, airtime and food. The remote and informal environments of artisanal mining sites make women more vulnerable to gender based violence, sexual violence, human rights abuses and health risks.²⁸² In Zimbabwe, the artisanal mining sites have become established economies awash with the elusive American dollar, with gold miners known to spend high amounts on wares such as second hand clothes, torches, shovels and food items sold by the vendors. Women take the risk and enter these male dominated environments in search of livelihoods. However, artisanal mining areas are known to be very informal, with no form of security or protection. The vulnerability of women is aggravated by the absence of not only security, but essential services like health, police or community structures which provide norms and values to be adhered to.²⁸³ There is limited government presence or any form of social cohesion that would cushion women from any form of abuse affecting women in artisanal mining areas, like physical, sexual, emotional and economic violence.²⁸⁴

²⁷⁹ G., Mkodzongi and S. Spiegel, 'Artisanal gold mining and farming: Livelihood linkages and labour dynamics after land reforms in Zimbabwe', 55:10 *The Journal of Development Studies*, (2019) pp.2145-2161.

²⁸⁰ A. Ferguson, et al. 'Feminist Perspectives on Class and Work', The Stanford Encyclopedia of Philosophy, <<https://plato.stanford.edu/archives/sum2023/entries/feminism-class/>>. Visited 10 November 2023.

²⁸¹ *Ibid.*

²⁸² M. Dzvimbo, et al, *supra*note 8.

²⁸³ N. Perrin, et al. 'Social norms and beliefs about gender based violence scale: a measure for use with gender based violence prevention programs in low- resource and humanitarian settings', 13:6 *Confl Health*, (2019). doi.org/10.1186/s13031-019-0189-x.

²⁸⁴ Hlungwani, P.M., Yingi E., Chitongo, L., 2021, Governance and politics of small-scale artisanal gold mining in Zimbabwe, *Journal of Public Administration and Development Alternatives*, Vol 6 No.1.

Pact and the Institute for Sustainability Africa, 2017, *The Contribution of Artisanal and Small Scale Gold Mining to Zimbabwe's Economic Growth and Development*, Washington DC, PACT

Chipangura, N. 2019, *Towards the decriminalization of artisanal gold mining in Eastern Zimbabwe*.

Incidences of violence towards women in artisanal mining communities have been documented throughout the world. There is a high prevalence of unlawful activities like drugs, violence and prostitution due to the *ad hoc* nature of artisanal mining communities, mainly formed in response to a gold rush. In Guyana, cases of rape of Amerindian girls were documented while in Peru, there were reports of high crime rates, rape and violence attributed to the absence of police and the lawlessness common in many artisanal mining sites. In Zimbabwe, rape, violence and the presence of criminal gangs who target women, while others end up entering into convenience relationships with men for security or protection.²⁸⁵ Mazowe ASM is one such area where women, including those engaged in downstream business activities have experienced multiple forms of sexualised violence.

Mazowe is predominantly an agricultural area, Region 1, characterised by high rainfall patterns, red soils and lush green vegetation. Lately, there has been a gold rush along the Mazowe River, where a lot of alluvial mining activities are taking place. The rush has also been exacerbated by the new Mines and Mineral Regulations,²⁸⁶ which stipulates that anyone can sell gold without being asked for its source. Besides the alluvial gold mining, there is a lot of gold panning in the area. People have descended from all over the country in search of the precious mineral. An artificial community has since emerged, comprising temporary accommodation for the artisanal miners and vendors, makeshift shops and bars. The population of the community consists of miners from different parts of the country, and vendors consisting of both men and women selling various items like food, second hand clothes, air time, alcohol and cigarettes. There are no state regulated security measures to protect the community. In terms of disputes, the community is self-regulatory, but given the vulnerable nature of women especially in male dominated environments, women are at the receiving end of these violent incidents. It is against this background that this study seeks to explore the experiences of female vendors in Mazowe artisanal mining spaces, in Zimbabwe.

In an environment typified by risks, danger and violence, the women are vulnerable to sexual violence, both through *quid-pro-quo* for safety and protection or coercion by ASM miners.²⁸⁷ In

²⁸⁵ T. Chawatama and A.A. Oyelana, *supra* note 2.

²⁸⁶ <www.iclg.com/practice-areas/mining-laws-and-regulations/zimbabwe> accessed 9 October 2023.

²⁸⁷ See <http://www.tydt.org/> (accessed 2 March 2023).

these forms of vulnerability, women surrender their sexual and many other rights to sustain both their livelihoods and businesses. While the artisanal mining sector has been recognised as a viable business entity, their activities are deemed unlawful, yet the government benefits from their work. Fidelity Printers and Refinery buys gold from artisanal miners on a “no questions asked basis”. The non-recognition of artisanal miners has led to the criminalisation of their activities, and consequently increasing the vulnerability of women working in those areas. No measures have been put in place to protect women working in downstream activities. Such women are then susceptible to violation of their rights. There is therefore a need for policies aimed at protecting women working in spaces such as these.

The rights of women are enshrined in the Constitution of Zimbabwe,²⁸⁸ which states in Section 51 that; every person has inherent dignity in the private and public life, and the right to have that dignity respected and protected. In section 52 (a), every person has the right to bodily and psychological integrity, which includes the right to freedom from all forms of violence from public or private sources; section 64, every person has the right to choose and carry on any profession, trade or occupation, but the practice of a profession, trade or occupation may be regulated by law ; and in section 80(1), every woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities. The rights of women are further enshrined in the Universal Declaration of Human Rights. Article 23 (1), which states that everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Under the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), Article 11 states that States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights. In addition, the Maputo Protocol (Article 13(e)) provides for state parties to create conditions to promote and support occupations and economic activities of women, in particular, within the informal sector. In the same vein, Sustainable Development Goals 1 and 5 seek to end poverty in all its forms everywhere and to achieve gender equality and empower all women and girls by urging nations to undertake reforms to give women equal rights to economic resources. It is through these reforms that women can also be given space to operate in artisanal mining spaces, which are currently dominated by

²⁸⁸ Constitution of Zimbabwe (amendment No. 13 of 2013).

men. There is therefore a need for a proper legal framework to protect vulnerable women in businesses operating in hostile gendered and sexual environments.

Scholarships for women in artisanal mining tend to focus on gender related challenges that women face in the sector.²⁸⁹ There is paucity of literature on the vulnerabilities of women in downstream vending activities like selling food, water, alcohol and sometimes commercial sex work. One of the most important reasons why women have remained invisible is that the literature has ‘historically focused, to a large extent, on digging practices, putting emphasis on the miner and excluding women who are mostly engaged in such non digging activities,’ (II’ED, 2018). According to the Advocates of Human Rights 2019 Report,²⁹⁰ the incidence of sexual and gender based violence is higher in informal artisanal mining communities than in formal mining areas due to the limited presence of police, non-existent traditional village authorities amidst a workforce of men who are without their families. There is considerable research on sexual and gender based violations experienced by women miners involved in the mining sector in general and ASM in particular.²⁹¹ However, scholarship for their female counterparts who have carved a niche on such activities as a form of livelihood has been thin. This means that the subsequent sexual and gender based violations that they experience remain under researched. For these reasons, this research seeks to locate gender and vulnerability in the business and human rights sphere for informal traders (women) working within ASM areas.

3 Assumptions and research questions

The study is guided by the following assumptions and research questions;

3.1 Assumptions

- i) Women are downstream service providers to artisanal miners in the Mazowe area.
- ii) Women in the Mazowe artisanal mining area experience physical, sexual and emotional violence.
- iii) Interventions need to be designed to address these vulnerabilities and provide suitable protection for women providing ancillary services.

²⁸⁹ H. Orleans-Boham, et al. Women in artisanal mining: Reflections on the impacts of a ban on operations in Ghana. 7:2 *The Extractive Industries and Society*, (2020). 583-586.

²⁹⁰ <https://www.theadvocatesforhumanrights.org/Publications> (Accessed 9 October 2023).

²⁹¹ O. Mafongoya, et al. ‘Gender Based Violence and Women’, in N. S. Mawowa, *The political economy of artisanal and small-scale gold mining in central Zimbabwe* 39:4 *Journal of Southern African Studies*, (2013) pp.921- 936.

3.2 Research questions

- i) What are the downstream activities carried out by women in the Mazowe artisanal mining area?
- ii) What are the lived experiences of female vendors conducting informal businesses in the Mazowe artisanal mining area?
- iii) What is the prevalence of sexual and gender based violence in women conducting informal businesses in Mazowe ASM areas?
- iv) How have women operating vending businesses combatted SGBV against them in the Mazowe artisanal mining area?
- v) What policy options can be employed to protect women at risk of gender based violence in artisanal mining areas?

4 Research Methodology

The proposed study employed qualitative research methods within a case study research design. Using purposive and snowballing sampling, a total of 20 respondents were interviewed, comprising 12 female vendors who ply their informal trade businesses in the Mazowe artisanal mining area. Five key informants were from the Zimbabwe Republic Police (ZRP) who have been deployed to the Mazowe mining area. The other two key informants from the Zimbabwe Artisanal and Small Scale Miners' Council (ZAMSC), a non-governmental organisation that has worked with women in artisanal mining and one key informant from the Ministry of Mines.²⁹² Both extant literature and secondary documents were reviewed to supplement primary data. Thematic analysis was used to analyse data.

In terms of research ethics the study was guided by informed consent, confidentiality and privacy. Informed consent was sought from the participants before the commencement of the interviews. While participation in the research was voluntary, participants were advised that they were free to opt out at any time that they felt uncomfortable to continue. The study also sought permission from the participants for audio recording of interviews. Participants were assured of confidentiality of their responses. Pseudonyms were used to hide the true identity of each participant.

²⁹² The number of interviewees allowed researchers to focus on in-depth understanding of the experiences of women vendors and to give more contact time for each participant.

4.1 Theoretical framework

The study adopts the Sustainable Livelihood Approach (SLA). It is based on the rationale of how the poor and vulnerable people live their lives and the importance of policies and institutions in the improvement of their lives. The notion of sustainable livelihood posits that everyone must have the opportunity to earn a sustainable livelihood.²⁹³ The SLA facilitates the identification of practical priorities for actions that are based on the views and interests of those concerned, but they are not a panacea to it. The SLA makes the connection between people and the overall enabling environment that influences the outcomes of their livelihood strategies. It brings attention to the inherent potential of people in terms of their skills, social networks, and access to physical and financial resources, and ability to influence core institutions.²⁹⁴

The approach is underpinned by three insights into poverty.²⁹⁵ Firstly, there is the realisation that while economic growth may be essential for poverty reduction, there is no relationship between the two. Rather, poverty reduction is dependent on the capabilities of the poor to take advantage of expanding economic opportunities.²⁹⁶ Secondly, there is a realisation that poverty is not a question of low income, but includes other dimensions such as bad health, lack of social services as well as a state of vulnerability and feelings of powerlessness, in general.²⁹⁷ Lastly, there is a recognition that poor people themselves know their situation and needs best, and must therefore be involved in the design of policies and projects intended to improve their lives.²⁹⁸ Therefore, the SLA gives the research a critical lens into the conditions of women plying their vending businesses in the Mazowe ASM area. As a result, the lack of a robust regulatory framework governing ASM spaces, high rates of SGBV cases, coupled with multiple layers of other negative socio-economic conditions prevailing in the area (and the country) are variables that impact widely on their livelihoods.

²⁹³ S. Morse and N. McNamara, 'The sustainable livelihoods approach', *Knowledge solutions: Tools, methods, and approaches to drive organizational performance*, (2013) pp.21-26.

²⁹⁴ *Ibid.*

²⁹⁵ Krantz, 2001.

²⁹⁶ In this case expanding economic opportunities refer to the mining regulations that allow artisanal mining activities and the selling of gold on a 'no questions asked basis.'

²⁹⁷ The state of vulnerability of women in this industry is exacerbated by the lack of strong laws and ASM specific gender-based violence policies and the informality of the industry, which makes it difficult for the state and civil society to deal with gender-based violence issues through formal channels.

Female vendors working in artisanal mining spaces must be involved in policies that improve their working conditions in the ASM spaces.

5 Review of related literature

5.1 Characteristics of Artisanal Mining Areas

Criminalised and infamous for an array of social ills, ASM spaces have generated a lot of interest at many global platforms. Likewise, scholarly discourse is awash with research studies carried out mainly on the economic, social and regulatory frameworks governing ASM enterprises globally. Literature has revealed that the anatomy of ASM differs from one country to the next and even from one area to another within the same country. Ndlazi, concurs that, “ASM is complex and wide-ranging, meaning different things to different countries and regions”.²⁹⁹ Hlungwani, also opine that there is no universally accepted definition of artisanal mining.³⁰⁰ However, definitions of ASM broadly carry undertones of negativity such as “resource curse” and “paradox of plenty”.³⁰¹ On the other hand, positive perceptions of ASM view it as a poverty alleviation strategy undertaken by millions of people across the globe.³⁰²

The nature of most ASM is to attract population groups that pursue informal forms of livelihoods. Ndlazi, argues that despite character variations amongst the participants within the ASM sector, research shows that the “most prevalent is statutorily unauthorised artisanal miners”.³⁰³ ASM workers are part of the 1.6 billion global informal workers as recorded by the 2020 International Labour Organization Report. Of these, 44.75 million people across more than 80 countries make their living directly in ASM.³⁰⁴ Buss et al, contend that ASM is highly accessible and therefore accommodates a cross section of young, mature women, men and children.³⁰⁵ A report of the ASM activities in the Republic Democratic of Congo proves that the majority of people involved in these activities are of low levels of education.³⁰⁶ Despite

²⁹⁹ S. Ndlazi, “Alone in the Dark”: How the current mining and minerals legal regime continues to fail artisanal and small-scale miners in South Africa’, 25:1 *Law, Democracy & Development*, (2022) pp.221-255.

³⁰⁰ P.M. Hlungwani, et al. Governance and Politics of Small-Scale Artisanal Gold Mining in Zimbabwe’, 6:1 *Journal of Public Administration and Development Alternatives (JPADA)*, (2021). pp. 28-42.

³⁰¹ A. Kalokoh, and L.V. Kochtcheeva, ‘Governing the artisanal gold mining sector in the Mano River Union: A comparative study of Liberia and Sierra Leone’, 34:7 *Journal of International Development*, (2022) pp.1398-1413.

³⁰² S. Spiegel, ‘Artisanal gold mining and farming: Livelihood linkages and labour dynamics after land reforms in Zimbabwe’, 55:10 *The Journal of Development Studies*, (2019) pp.2145-2161.

³⁰³ S. Ndlazi, *supra*note 30.

³⁰⁴ J. Mcquillen and R. Perks, ‘Delve 2020 State of the Artisanal and Small-Scale Mining Sector (English)’, World Bank Group. United States of America. (2021). <www.policycommons.net/artifacts/1810618/delve-2020-state-of-the-artisanal-and-small-scale-mining-sector-english/2546173/> visited on 10 Oct 20

³⁰⁵ D. Buss, et al. ‘Gender and artisanal and small-scale mining in central and east Africa: Barriers and benefits’, (2017).

³⁰⁶ *Ibid.*

adequate educational capacity, compounded by the absence of other viable livelihoods, Zimbabwe has seen a mushrooming of ASM particularly in regions with rich mineral deposits, which encourages illicit mineral extraction. Mazowe ASM is one of such areas as affirmed by Nyavaya (2021:1),

“[w]ith unemployment numbers generally soaring high and successive droughts immensely affecting subsistence farming, youthful populations in and near mineral rich areas like Mazowe (Mashonaland Central) and Kenzamba (Makonde, Mashonaland West) are fast resorting to a more lucrative alternative, artisanal and small-scale mining (ASM).”

Mkodzongi and Spiegel also argue that the sector has become “an exceedingly vital coping strategy as a seasonal, part-time, and permanent livelihood activity in Zimbabwe”. Therefore, hundreds of unemployed youths and women across the country flock to ASM areas as a promising and sometimes only income opportunity available to them³⁰⁷. As summarised by Bodenheimer,³⁰⁸

“[t]he job of a small-scale miner is brutal: it is physically demanding, the health risks are enormous, and the take-away is almost negligible. But herein lies the key: it is only almost negligible and the small amount of money that a gold-miner can earn at the end of a day is more than is available to him anywhere else.”

Thus, artisanal and small-scale mining has become a source of livelihood for diverse population groups. According to Singo, ASM is a much more complex political and social space in which various actors pursue their agendas and interests while navigating obstacles posed by others, the environment, and the local history. Thus, the conglomeration of diverse actors and their equally atypical goals colour the social fabric of most ASM spaces in the global south. From the onset, ASM is portrayed as complex and multi-layered at both economic and social levels. From a more monocular angle, Singo defines it as mining activities characterised by low level

³⁰⁷ Gracian Mkodzongi and Samuel Spiegel, 2019, Artisanal Gold Mining and Farming: Livelihood Linkages and Labour Dynamics after land reforms in Zimbabwe, *The Journal of Development Studies*, 55:10, 2145-2161
Mwanderingana, E and Ye, I. Mining what is not mine: Artisanal gold mining in Gwanda, Zimbabwe, *The Extractive Industries and Society*, Vol 13, March 2023, 101217.

³⁰⁸ M. Bodenheimer, ‘Certifying improvement, improving certification: An analysis based on the artisanal and small-scale mining sector’, Working Paper Sustainability and Innovation, No. S9/2014, *Fraunhofer-Institut für System- und Innovationsforschung ISI*, Karlsruhe (2014).

mechanisation, safety and social security awareness.³⁰⁹ Other characteristics of artisanal mining are that these are largely informal activities dominated by the poor qualifications of employees, low level productivity and seasonal or periodic operations.³¹⁰ The Zimbabwe Economic Policy Analysis Research Unit (ZEPARU) defines it as an activity where individual or family members are involved in very small-scale manual mineral extraction without legal title, while the OECD (2016) defines it as the formal or informal mining operations with predominantly simplified forms of exploration, extraction, processing and transportation. ASM has become a major employment generator and a source of livelihood for many people, both rural and urban, who have been affected in one way or another by dwindling economic opportunities in developing countries.

Despite the varying national, regional and global socio-economic landscapes in which ASM is located, definitions of this phenomenon have picked threads of commonality across the globe. Generally, ASM is understood as “an ecosystem—with layers of socioeconomic activity operating via interdependent production networks”.³¹¹ One common feature of ASM areas is violence. Spiegel in Mwandiringana & Ye, attests that much of the literature on artisanal gold mining portray this livelihood activity as a disorderly enterprise riddled with violence and fatal conflicts. Hwehwe and Thebe,³¹² opine that artisanal miners are associated with “very often a negative narrative, portraying images of ruined lives, with *makorokoza* (irregular miners) engaged in reckless social behaviour, carelessly spending their income, and behaving like social delinquents”. This violence manifests among artisanal miners, between the miners and local communities, between miners and vulnerable groups like women and other stakeholders with vested interests in the resources under extraction.

5.2 Experiences of Female Vendors Conducting Downstream Livelihood Activities at ASM Sites

The presence of women around artisanal and small-scale mining areas has become commonplace globally. According to the IIED (2018), ‘though not often acknowledged, the

³⁰⁹ J. Singo, et al. ‘Hazards and Control Measures among Artisanal and Small-Scale Gold Miners in Zimbabwe’, 88:1 *Ann Glob Health*, (2022) p.21.

³¹⁰ M. Hunter, ‘Illicit financial flows: Artisanal and small-scale gold mining in Ghana and Liberia’, (2020).

³¹¹ (Henderson et al. in Mcquillen & Perks, 2021).

³¹² C. M. Hwehwe and V. Thebe, ‘The ‘nouveau riche’ and ‘makorokoza’: Artisanal and small-scale gold mining and unequal distribution of benefits in the Shurugwi District, Zimbabwe’, 8:4 *The Extractive Industries and Society*, (2021) p100959.

role of women in ASM is significant, as they make up around 30 per cent of the total workforce, and up to 50 per cent in some regions.’ The Development Governance Institute (DEGI, 2015) Report confirms this for Guinea where women make up 75% of the ASM sector, while in Mali and Zimbabwe, women’s participation is around 50%. Therefore, women have been involved in the ASM sites as miners globally. On the other hand, the World Bank (2020) asserts that beyond the mine site lies a range of indirect labour activities that are still in need of better documentation and understanding. In the Development Research and Social Policy Analysis Centre Report, women are said to be an essential part of artisanal mining but largely taking on roles from panning and processing, to trading goods and services (DRASPAC, 2017). Dzvimbo et al, also add that in many such areas, women function in multiple capacities as panners and may also obtain income as sex trade workers or cooks. In addition, the IIED (2018) argues that although cultural and historical aspects have relegated women’s participation to the periphery, they are also active in the provision of goods (e.g., food and drink vending, sales of artisanal equipment such as sieves, and credit for mobile phones) and services. Likewise, Mkodzongi and Spiegel also state that women are involved in businesses such as selling food and providing temporary accommodation to miners.³¹³ This is further corroborated by Keck in Dzvimbo et al who says,

“[w]omen within these communities are also heterogeneous and unique; however, they tend to be engaged in specific roles throughout the world. Typically, they are labourers (panners, ore carriers and processors), providers of goods and services (for instance cooks, shopkeepers) and are often solely responsible for domestic chores.”

Ndlazi attributes the burgeoning ASM sector to the rise of unemployment, compounded by the instability of the economy, as well as the onslaught of the Coronavirus pandemic.³¹⁴ In Zimbabwe, Mkodzongi and Spiegel argue that “a gold rush” usually leads to an increase in petty commodity retailing. Artisanal mining has become instrumental in poverty alleviation in Zimbabwe.³¹⁵ In a highly informalised economy like Zimbabwe, it can be assumed that ASM spaces are also typified by (mainly) women capitalising on lucrative downstream activities such as vending and sex work. For these reasons, ASM sites are not a preserve of artisanal mining only but othersecondary yet essential services like food vending which women provide.

³¹³ Mkodzongi and Spiegel, *supra*note 38.

³¹⁴ Ndlazi, *supra*note 30.

³¹⁵ Mkodzongi and Spiegel, *supra*above

5.3 Women's Experiences of Sexual and Gender Based Violence in ASM Areas

Population dynamics in ASM reflect a cross section of diverse groups, key among whom are the irregular miners and women who conduct vending businesses in the areas. The former, are locally referred to as “makorokoza”,³¹⁶ “Mashurugwi”, “Magweja” and “Magwejelina” for the female version, among other variants.³¹⁷ These are infamous for their arbitrary violence tendencies, a reaction to an increasingly criminalised sector.³¹⁸

Undeniably, there are intersections between SGBV and the ASM the world over. The Zimbabwe Environmental Law Association (ZELA) agrees that the artisanal and small-scale mining sector has become synonymous with GBV which takes various forms.³¹⁹ These include “sexualised banter and verbal abuse, to regular inappropriate touching and slapping, sexual assault and rape”.³²⁰ Ndlazi view artisanal miners always have an “acrimonious coexistence” with surrounding communities as well as other non-ASM miners like women. For women, these conditions are aggravated by the very anatomy of ASM areas which are “hyper-masculine” and replete with risks associated with a male dominated and masculinised sector.³²¹ Unfortunately, as Mafongoya et al state, “When ASM was formalised, the government failed to explicitly link it to GBV prevention laws or to craft context-specific policies to curb GBV which was already pervasive within the sector”.³²² This ‘formalisation’ seems to be driven by the government’s benefits derived from the sector, thereby creating the sense of benefit and obligation.

In a quest to eke out some livelihood, female vendors choose to venture into ASM areas (despite the risk) and thus expose themselves to potential SGBV. Given the government's benefits

³¹⁶ Makore, 2017.

³¹⁷ B.M. Manobo, ‘Mashurugwi: A Manifestation of a Weakening Human Security Situation in Zimbabwe’, 6:1 *The Fountain: Journal of Interdisciplinary Studies*, (2022) pp.66-84.

³¹⁸ T. Nyamunda and P. Mukwambo, The state and the bloody diamond rush in Chiadzwa: Unpacking the contesting interests in the development of illicit mining and trading, c. 2006–2009. 38:1, *Journal of Southern African Studies*, (2012) pp.145-166.

³¹⁹ Mafongoya et al, *supra*note 28.

³²⁰ (Pillinger and Wintour, 2022).

³²¹ Ndlazi, *supra*note 30

³²² Mafongoya et al, *supra*above.

derived from the sector, there is a need for the regulation of the informal sector and sexual exploitation prevalent in such spaces.

While Mafongoyaopine that it is difficult to explore GBV in this “grey area of informal employment”, SGBV cases are arguably prevalent in most ASM sectors.³²³ Pillinger and Wintour argue that, “[a]cross the world significant problems of GBV exist in remote work camps and in artisanal mining, where a male dominated and transient workforce, shift work, substance abuse, addiction and economic insecurity have fuelled heightened levels of domestic violence.”³²⁴ This is due to the fact that artisanal mining sites promote delinquent behaviour which is exhibited by generally youthful artisanal miners. Such behaviour is contrary to societal norms and regulations.³²⁵ Therefore, the areas in which these women work have compromised human security and they are at the mercy of artisanal miners, both registered and unregistered, as their business is dependent on them. This dependency is the basis to violent dynamics in which the women must accept sexual abuse, physical and emotional violence and the violation of their human rights in order to earn a livelihood.³²⁶

For some women, sex work is an alternative source of livelihood when regular vending and other business activities fail. “Many women (including those that migrated to ASM areas to make a living from working in mining activities or in the bars and hotels of mining towns) end up engaging in sex activities”.³²⁷ This alternative form of livelihood is a readily attainable option given that “in artisanal and small scale mining, where the workforce is largely made up of men-knit without their families, there is an acceptance of GBVH and of the commercial sex trade”.³²⁸ Moreover, the sexual economy is well established as gold miners spend highly on prostitution.³²⁹ However, by opting for sex work, the women further expose themselves to SGBV. A 2020 GIZ report states that 74% of women in eastern Democratic Republic of Congo have been subjected to sexual violence in the ASM. In this highly volatile context, SGBV seems

³²³ *Ibid.*

³²⁴ Pillinger and Wintour, *supra*.

³²⁵ *Ibid.*

³²⁶ www.tydt.org/ (accessed 2 March 2023)

www.alignplatform.org/resources/gender-based-violence-and-women-artisanal-mining-zimbabwe (accessed 2 March 2023).

³²⁷ Dzvimbo et al, *supra*note 8.

³²⁸ Pillinger and Wintour, *supra*.

³²⁹ Chawatama and Oyelana, *supra*note 2.

like an unavoidable eventuality for women located in these spaces. For these reasons, this paper sought to explore the extent of women's vulnerabilities within ASM sites in Zimbabwe.

5.4 Policy and Regulatory Frameworks in ASM Areas

Across many sections of the society globally, SGBV is known to be an underreported crime. One can assume that it would be particularly harder for women who are subjected to this in the ASM sector to report due to a number of reasons. One of the key barriers for women operating as vendors in the ASM sector located in the global south is the legal status of their activities. In Zimbabwe, most ASM activities are not registered, which makes it difficult for the state and civil society actors to deal with GBV issues through formal and legal platforms.³³⁰ Globally, ASM spaces are characterised by vulnerabilities that are accentuated by the informality and lack of regulatory frameworks.³³¹ In Africa, ASM sectors are governed by a combination of formal and informal actors. The combination of this unhealthy marriage and the absence of firm regulatory frameworks leads to confusion and possibly increased lawlessness in the sector. Non-recognition of the areas, lack of access to policing and other protections are an issue. In Zimbabwe, this is contrary to the constitutional right for every person has the right to choose and carry on any profession, trade or occupation (s64). Here, ASM may operate legally with the required mining permits but approximately 80 percent of the artisanal miners are unregistered and operate informally and irregularly.³³²

Even where there are some regulatory frameworks in place, these are always inadequate to comprehensively cover issues that rise from this sector. In South Africa, Ndlaziattests that the government has seemingly failed to design a fitting and unique legal framework which would cater to its many peculiarities. In the majority of cases, regulatory frameworks operational in ASM sites are inclined towards the miners, gold prices, economic aspects and none on social issues prevalent in this sector. To compound this, most ASM have not been regularised which leads to their criminalisation. Buxton assert that "[m]any policies for ASM at national and international levels tend to focus on addressing specific challenges such as conflict minerals, mercury use, child labour and environmental impacts." This is supported by Mutingwende

³³⁰ Mafongoya et al, *supranote* 38.

³³¹ Kalokoh and Kochtcheeva, *supranote* 32.

³³² <www.zimfieldguide.com/midlands/zimbabwe%E2%80%99s-artisanal-miners-popularly-known-makorokoza-risk-their-lives-make-decent-living>accessed 18 September 2023.

who argues that these standards deepen the plight of women in the absence of strong laws and ASM-specific GBV policies to protect them.

Zimbabwe has had significant milestones in the mines and minerals regulatory frameworks since its independence in 1980. In 2013, the Government of Zimbabwe recognised artisanal mining as holding potential in supporting Zimbabwe's economic recovery. This was followed by the registration of the artisanal miners through the Zimbabwe Mining Federation ZELA, 2021.³³³ However, the policies and amendments of existing laws have failed to adequately speak to the fast growing and complex ASM sector. In the context of this paper, the situation is worse for the largely informal businesses located within but not primarily related to ASM activities. The central legislation for the Zimbabwean mining sector is the Mines and Minerals Act [Chapter 21:05]³³⁴ which basically covers issues such as rights, ownership and restriction, and environmental aspects, among other things. Reference to artisanal mining ventures and related activities in these sites is conspicuously invisible in this Act. The closest regulatory framework to address ASM activities is SI 275 of 1991, Mining (Alluvial Gold) (Public Streams) Regulations. This SI strives to create a framework whereby rural district councils (RDCs) are mandated to issue licenses to riverbed gold panners independent of the Ministry of Mines (Spiegel, 2015). Again, this law fails to capture the reality on the ground whereby people who operate in ASM rarely seek formal permission to operate. This appears to be a regional malady as attested by Ndlazi who confirms that there is a disconnection between law, policy and practice in ASM South Africa.³³⁵ In most ASM contexts, decades of focus on top-down formalization policies as the panacea of the ASM sector have met many obstacles.³³⁶ In the Zimbabwean context, the Environmental Management Act [Chapter 20:07] is sometimes engaged as efforts to contain the chaos in the sector with police crackdowns such as Operation *Chikorokoza Chapera*, being presented as the formalization efforts in the ASM sector.³³⁷ Zimbabwe, like many governments in the global south, has failed to align its regulatory framework with ASM activities prevalent in the mining sector. Ultimately, there is a dearth of policies and laws to regulate the ASM section as well as protect citizens who depend on this sector for their livelihoods.

³³³ Hlungwani, Yingi and Chitongo, 2021, *supra*note 31.

³³⁴ Mines and Minerals Act [Chapter 21:05].

³³⁵ Ndlazi, *supra*note 30.

³³⁶ A. Buxton, et al. 'Tenure rights in large-scale and artisanal mining'. (2021).

³³⁷ Spiegel, *supra*note 38.

The risks that result from a lax regulatory framework are a chaotic sector with multiple non-state organisations such as the Zimbabwe Artisanal and Small-Scale Miners' Council (ZAMSC), Zimbabwe Miners Federation (ZMF) and Zimbabwe Environmental Law Association (ZELA) stepping in as “*de facto* authority”.³³⁸ Due to this, the ASM sector becomes home to all forms of exploitative tendencies, human rights violations and gender-induced maltreatment. Alongside these, the predominantly masculine sector then allows norms that normalize GBV as a way for men to wield power over women.³³⁹ Therefore, it is necessary to consider the protection of female vendors operating downstream businesses in ASM sites in Zimbabwe.

6 Presentation and Discussion of Findings

6.1 *Lived Experiences of Female Vendors Conducting Downstream Activities in the Mazowe ASM*

From the interviews carried out with female vendors operating in the Mazowe area, it is clear that they flock to the area because of high business volumes when there is a gold rush. Mawowa states that gold rushes are triggered when gold is discovered in and around disused mines, while at times they can be accidental new discoveries. The rush draws myriads of people, from artisanal miners, vendors, sex workers and buyers, and die down after the gold ore has been exhausted. Five of the 12 participants used to be vegetable vendors in Harare then moved to the Mazowe area because of the high margins of profits, after a gold rush. They agreed that sales were significantly higher than what they could get from vegetable vending. WV9³⁴⁰ said she normally carries out her vending business at Market Square (a bus terminus in the Harare Central Business District) or Mbare (the long-distance terminus), but occasionally goes to Mazowe because business volumes are higher. Despite having heard about the violent nature of artisanal miners, popularly known as “*MaShurugwi*” (known for using machetes), Women Vendor2 (WV2) says it was worth the risk, with lures of around USD100 or more a day, way higher than what they could get in town. WV1 is now involved in selling cooked food and

³³⁸ A. Buxton et al, *supra*note 66 above.

³³⁹ *Ibid.*

³⁴⁰ WV is the acronym used for women vendors interviewed during this study. The acronym was used to protect the women's identities.

second-hand clothes, while WV2 also sells cooked food (sadza), as well as a few grocery items like mahewu (local energy drink), cigarettes and alcohol. WV9 sells burgers and perfumes. When asked about her market for perfumes, she said she targeted other women working in the ASM spaces, mostly the commercial sex workers.

Other vendors sell similar items, including airtime and small radios. None of the female vendors admit that they are solely in the area for prostitution, however they acknowledge that it is common for female vendors to enter into relationships with artisanal miners. The women have learnt to adapt to the demands of life in these areas and seem resigned to it. While some of the participants seem resigned to the negative environment in Mazowe, WV11, better known as “*comrade*” by her colleagues declared that she cannot afford to give up as she has no alternative livelihood to fall back to. Widowed at 25 years old and left with 2 young children, WV11 said, “Mazowe is really a difficult area to work in but I don’t have the luxury to quit!”

However, a number of the women vendors attest that vending in Mazowe is more profitable than urban street vending. Those who sell second hand clothes and other wares say that they can get up to USD500 a day, especially after gold sales. WV3 said, we make a lot of money here particularly when the artisanal miners hit a rich patch. This has also drawn women who originally occupied other professions into vending to take advantage of this lucrative business. WV10, a hairdresser by profession said, “I started coming to sell second hand clothes in Mazowe after a neighbour told me of the kind of money that she was making by vending. So, I come during weekends. Its way better than the salary I get at my work place and quicker”.

Artisanal miners are known to be reckless spenders, to the advantage of the vendors but are also very aggressive when they have no money. WV9 said, “They do not hesitate to borrow money or goods with promises to return the money and pay for the goods when they sell gold, but the demands for payment at times erupt into violence”. Generally, the female vendors said they count losses from the borrowings, and there is nowhere to report such fraudulent behaviour. Business is on a cash basis, but at times the artisanal miners borrow with promises of paying back after selling their gold. WV4 reported that she lost business on two occasions when she lent her burgers on credit to artisanal miners. When she demanded her payment as per their agreement, her goods were trashed and she was threatened with a knife. She said she did not report the incidences for fear of being stabbed and was not sure if she could get protection from

the police, whom she said the police are also afraid because of the level of violence in the area. For WV5, the most frustrating thing in all these violations was the feeling of helplessness. She said, “We are all struggling here and I get really angry when someone (irregular miners) takes my goods and refuses to pay for them.” She further declared that she wished she was as brave as “comrade” who at one point picked up a stone to defend herself against *makorokoza*.

According to a key informant from the Zimbabwe Republic Police, there are two groups of artisanal miners in the area. One group comprises the miners who go down the shafts and do all the hard work until they have the final product. The other group (*magombiro*, the most violent one) is made up of those who would want to take advantage of the first group, demanding their gold. A lot of violence erupts between the two groups, and sometimes spills over to the vendors. “When *magombiro* fight, no one is safe. Women who are vendors in the area often get caught in the crossfire when this happens,”.

The vulnerability of women in this area stems from the marginalisation of the artisanal mining sites. Chawatama and Oleyana argue that the remote and informal nature of the mining activities makes women more vulnerable to gender based and sexual violence, human rights abuses and health risks. According to WV6, these areas are very isolated and we have no protection. However, it's a little better now as more people are coming to conduct their businesses here. WV6 further explained that the women often took refuge in numbers as the government had not addressed the realities on the ground. WV12 supported this by stating that both the vendors and artisanal miners were irregular and therefore subject to harsh treatment from the police.

6.2 Prevalence of SGBV Against Women Operating Informal Business in the Mazowe ASM

The study established that Mazowe ASM area is rife with all forms of violence between the artisanal miners themselves and with women vendors plying their trade in the area. As corroborated by the available literature, violence of every nature is pervasive in ASM spaces ranging from verbal abuse to sexual assault.³⁴¹ Therefore, the ASM areas are minefields of SGBV for female vendors who work in them. The Mining Minerals and Sustainable

³⁴¹ Nyamnunda and Mukwambo, 2012; Pillinger and Wintour, 2022

Development Report (MMSD)³⁴² affirms this and describes ASM as breeding grounds for crime, prostitution and sexually transmitted diseases. To compound this, these incidents of violence are said to occur at alarming frequencies and rates, aggravating the women's vulnerability. KIIa, who is a public service security officer, confirmed that the common crimes in Mazowe are murder, robbery, rape, sexual intercourse with minors, which occur every day. According to one female vendor (WV1, mother of three), artisanal miners fight amongst themselves, particularly over women or love relationships as well.³⁴³ Though she did not qualify the nature of violence prevalent in the area, another female vendor attested (WV2, single mother of 2) that "there is lots of violence in the area." WV3, a younger female vendor openly categorised the violence against women as sexual in nature. She said, (artisanal miners are very rough. You can get beaten up for refusing his sexual advances). WV4 also added that life in Mazowe was like a war zone. "You never feel really safe here." This is supported by Mafongoya who argues that the women's vulnerability to violence is fuelled by discriminatory gender norms that see women as men's property and that permit violence. In this view, women vendors in Mazowe ASM prove their susceptibility to sexualised violence as well as other forms of rights violations when operating in this highly volatile environment. For the majority of them, the incidents of violence rob them of their agency and magnify the general apathy to SGBV.

A key informant, a public service security officer added that the violence is also due to non-payment of money for goods bought on credit. "Violence occurs very often among themselves. With women, it is mostly when lending each other money. Instead of paying their debt, they become violent to the vendors. There is also a lot of prostitution. A Ministry of Mines officer summarily said, "[e]xploitation is definitely there". All the KIIs in the security services acknowledged the prevalence of sexual intercourse with minors which in most cases lead to teenage pregnancies. The prevalence of abuse of minors also reflects extended social decay and

³⁴² <www.iied.org/9084iied> accessed 5 October 2023.

crime in Mazowe ASM and other ASM spaces globally. This further raises questions of legal protection (or the lack of it) for all of the people operating in irregular artisanal areas. As corroborated by Kalokoh and Kochtcheeva, one common thread running through artisanal mining areas regionally and locally is the absence of government regulatory frameworks which further amplify women's vulnerabilities to violence. In addition to regulatory framework deficiencies, KIIs interviewed in this study attributed this to large amounts of cash flows among the artisanal miners which attracted the young girls in these communities.

“Artisanal mining sites are unregulated areas with no formalised utilities. ASMers sleep in whatever shelter, exposed to danger. It's not difficult for prostitution to happen. A lot of pregnancies are caused by artisanal miners because they have the money to entice young girls. Risks are definitely there,” (KIIa, Ministry of Mines).

6.3 Women's Strategies in Combating SGBV in the Area

The study established that the women vendors employ various strategies for their safety, including using false identities, avoiding conflicts with the artisanal miners, getting indoors early and safe disposal of any extra cash. False identities are used by the women vendors in a bid to avoid sexual harassment. They disguise themselves as married women, a status that carries some respect in society³⁴⁴. WV8 and 9 revealed that there is no security and as such they have to devise their own tactics for their safety. Police are often deployed to stop the criminalised artisanal miners while the makeshift shops are also not spared during the raids. WV4 said they have devised means of communicating about imminent police presence, after which they would close their shops until the raid is over. Therefore, the women have developed some strategies to defy the challenges they experience in the area in various ways. Such strategies portray the women in a positive light as opposed to the common theme of victimhood found in both local, regional and international discourse on women operating in contexts of compromised human rights and human security. A key informant from the ZRP (KIIc) said they never go into the area unarmed, and in cases of gender-based violence, they often leave the parties to resolve on their own. Mutingwendeechoes this normalisation of gender-based violence attributing it to the generally youthful population common in ASMS. The study established that this is partly due to the bribes the police receive from the artisanal miners and

³⁴⁴ WV6 and WV7 said they identify themselves as married women to gain respect from the artisanal miners.

a general habit of trivialising gender-based violence reports, whereby the victim is sometimes not taken seriously or told to go back home and solve the issue with the partner.

WV1 (WV1, single mother of three) introduced herself as a married woman. There appears to be a level of respect afforded married women, hence the disguise by WV1. Relationships for convenience are common, and act as security to the female vendors, One has to have a boyfriend among the artisanal miners for security. Women are forced to enter into relationships of convenience for their security. In their views, women in relationships can operate *freely* which also cushions them against rampant sexualised abuses from their male counterparts.

The other strategy is to avoid conflict with the artisanal miners at all costs, because once you experience it, you are almost always short-changed and have no protection from the police, who are also afraid of the artisanal miners on one hand, and are often bribed to overlook the cases. Both sides (artisanal miners and vendors) are irregular and in a way *running away* from the police. However, in the event that a crime is reported, the artisanal miners bribe the police and the female vendor loses out. Police may arrest the perpetrator, but after receiving bribes they release the men and the woman never receives justice. Mawowa confirms that police admitted to taking kickbacks for turning a blind eye or releasing the arrested miners. It must also be noted that there is a power struggle between the police and the *makorokoza*, the former representing the state and their own interests and the latter at times representing political power. In such a context, women vendors are exposed to diverse vulnerabilities common in areas of conflict.

The study also established that violence also occurred when *makorokoza* were on dry days (days when they fail to get any gold). Naturally, the victims then became the female vendors, especially those that were enjoying brisk business. To safeguard themselves, WV5 said when you have a big turnover you send the excess for safekeeping, offsite, as it is risky if you are known to be holding large amounts of cash. Vendors also have to be indoors early, to avoid risks of rape. WV4 said they have to rent accommodation in nearby villages where they are under the protection of communal structures.

6.4 Policy options and other protection mechanisms for women operating in the area

The informalised nature of Mazowe ASM has led to the absence of policy and legal frameworks being implemented to regulate both operations and social relations among the population groups in the area. Buxton et al, define this as “legal precariousness.” As a result, women vendors are exposed to various forms of violations with no protection from the national regulatory frameworks. “There is a need for formalised organisations to negotiate on behalf of female vendors” (KIId). KIIf, a representative from Vendors Initiative for Social and Economic Transformation (VISET), said that their organisation does not cater for the vendors in ASM. “VISET covers small scale farmers, not miners for now.”³⁴⁵

When describing the regularisation of Mazowe ASM, one key informant (KIIa, Ministry of Mines) was quick to say “[a]rtisanal mining is irregular. But everyone is protected under the general law.” KIIf (Public service security officer) confirmed this and stated, “laws to protect women are there such as Criminal Codification and Reform Act, Domestic Violence Act but in Mazowe, they are of no use.” Kalokoh and Kochtcheeva³⁴⁶ feel that most ASM spaces always develop in advance of the legal system, where existing policy and legal frameworks fail to address current dynamics in the sector such as downstream activities and its social connotations.

“Two types of mines in Zimbabwe are large scale and small scale. Large scale are formal, fully licenced while small scale are unlicensed miners, not recognised and irregular. They have no formal papers and are mostly involved in alluvial mining or proper shaft mining. Mostly in disused mines,” (KIIa).

In these spaces, lawlessness abounds. Therefore, the women vendors are virtually unprotected against context specific violations which occur in ASM spaces. Hentschel opines that legalization of ASM would ensure that the negative social and environmental effects of the sector would be curbed.³⁴⁷ Therefore, the susceptibility of female vendors to violence in the sector demands robust regulatory frameworks of the ASM sector.

³⁴⁵ *Ibid.*

³⁴⁶ Kalokoh and Kochtcheeva, *supra* note 32.

³⁴⁷ T. Hentschel, ‘Artisanal and small-scale mining: challenges and opportunities’, (2003).

7 Conclusion and recommendations

Along with the hundreds of artisanal and small-scale miners that have often engaged in the dangerous but lucrative livelihoods at the Mazowe ASM sites, female vendors are eking out precarious livelihoods from downstream business activities. From the findings of the data collected within Mazowe ASM, the study concludes that there is a prevalence of sexualised and gender-based violence crime in Mazowe ASM sites. Most of these are directed against women conducting (vending) businesses within the area. The study also concludes that the lawlessness and normlessness in Mazowe ASM area is mainly perpetrated by *makorokoza* (irregular miners). The rampant, frequent and consistent SGBV cases (and other crimes) have exposed female vendors to multiple vulnerabilities which in turn have accentuated human right violations.

The irregularity of Mazowe ASM sites, corruption, apathy to violence and the lack of agency among the female vendors have reduced national laws to invalidity. Consequently, SGBV is trivialised and normalised in the highly masculinised area. In the absence of legal protection, corruption worsens the women's lives in the area forcing them to conform and adapt to the normlessness of the environment as a key survival strategy. The study also concludes that the absence of the government in its dual duty to protect such vulnerable populations and regulate operations in ASM areas, is a relegation of its mandate which exposes the women to manipulation and exploitation by other stakeholders. The women are said to divert from vending to prostitution or enter into relationships of convenience with artisanal miners as a form of livelihood and safety measure against the inherent SGBV threats. Generally, the study concludes that the women lack agency to advocate for protection against the violations in the Mazowe ASM area.

7.1 Recommendations

- Given the prevalence of downstream activities in ASM areas, and the subsequent lawlessness associated with this informalised sector, the policy makers should recognise and legalise downstream activities in ASM areas through relevant policies and legal frameworks.

- Relevant government departments like the Ministry of Mines, Ministry of Local Government, Ministry of Small Scale and Medium Entrepreneurship and relevant non-governmental organisations should collaborate to eradicate the social ills in artisanal mining areas.
- Due to the irregularity of their forms of livelihoods, female vendors in ASM sites need to form networks for collective bargaining against corruption and lack of legal protection.
- The government should decriminalise and regularise artisanal mining to allow for formal operations in those areas.
- With the prevalence of SGBV in artisanal area, women's organisations and NGOs in ASM areas need to raise awareness on SGBV and build up female vendors' agency to combat the rampant violations in the sector.
- Multi-stakeholders intervention needed to employ good practices in ending SGBV in all sectors, formal and informal.



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